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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

MARKET/MEDIA RESEARCH, INC.,

Petitioner,

vs.

CUYAHOGA COUNTY COURT OF COMMON PLEAS,
and
JAMESTOWN VILLAGE CONDOMINIUM
OWNERS ASSOCIATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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ISSUES PRESENTED FOR REVIEW

In the last term, this Court decided Chambers v. NASCO, Inc., --- U.S. ---, 111 S.Ct. 2123 (1991), holding that courts possess the inherent power "to fashion an appropriate sanction for conduct which abuses the judicial process." Id. at 2133. This case raises the related questions:

1. Does a court's inherent power to sanction conduct which abuses the judicial process imply the duty to exercise that power?

2. Does the failure or refusal of state courts to sanction the offenders for "acts which degrade the judicial system" and pervert justice, including "fraud, misleading and lying to the court", perjury, complicity in perjury and tampering with evidence, which have been brought to the court's attention, deprive the injured party of due process and equal protection of the laws in violation of the Fourteenth Amendment?

3. Is a petition for certiorari with a suggestion for summary reversal pursuant to Supreme Court Rule 16.1 the appropriate remedy when a court from which a party has no appeal as of right bases its decision on a clearly false statement of the record and denies a timely motion or petition for rehearing without specifically addressing (1) its misstatement of the record, (2) its disregard of prior controlling decisions of this Court explicitly brought to its attention, or (3) the federal constitutional questions timely raised in that court?

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OWNERS ASSOCIATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Petitioner Market/Media Research, Inc. prays that a writ of certiorari issue to review the order of the Supreme Court of Ohio dismissing petitioner's original action in prohibition in that court and the order denying petitioner's motion for rehearing.

OPINIONS BELOW

The order of the Supreme Court of Ohio dismissing the action (App. 3) is reported at 62 Ohio St.3d 1438. The order denying petitioner's motion for rehearing (App. 18) is reported at 62 Ohio St.3d 1472.

JURISDICTION

The order of the Supreme Court of Ohio dismissing this action was entered on October 23, 1991. An order denying the timely motion for rehearing was entered on November 26, 1991. An order granting a 20-day extension of time to and including March 16, 1992, within which to file the petition for a writ of certiorari was entered by the Honorable John Paul Stevens on March 3, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

1. Supreme Court Rule 16.1 provides:

.1. After consideration of the papers distributed pursuant to Rule 15, the Court will enter an appropriate order. The order may be a summary disposition on the merits.

2. The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

...[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. Article I, Section 16, of the Constitution of Ohio provides in pertinent part:

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation shall have remedy by due course of law, and shall have justice administered without denial or delay....

4. Article IV, Section 2(B) of the Constitution of Ohio provides in pertinent part:

(B)(1) The supreme court shall have original jurisdiction in the following:

***

(d) Prohibition;

***

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

5. Ohio Supreme Court Rule VIII, Sect. 1.

An original action, other than habeas corpus, shall be instituted by the filing of a complaint, *** and such action shall proceed as any civil action under the Ohio Rules of Civil Procedure.

6. Ohio Civil Rule 6(B) provides in pertinent part:

(B) Time: Extension. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may ... (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; ...

7. Ohio Civil Rule 12(B) provides in pertinent part:

... When a motion to dismiss for failure to state a claim upon which relief can be granted presents matters outside the pleading and such matters are not excluded by the court, the motion shall be treated as a motion for summary judgment and disposed of as provided in Rule 56. Provided however, that the court shall consider only such matters outside the pleadings as are specifically enumerated in Rule 56. All parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.

8. Ohio Civil Rule 34(A) provides in pertinent part:

(A) Scope. Subject to the scope of discovery provisions of Rule 26(B) any party may serve on any other party a request to produce and permit the party making the request, or someone acting on his behalf, (1) to inspect any copy, any designated documents ... which are in the possession, custody or control of the party upon whom the request is served; ...

9. Ohio Civil Rule 36 provides in pertinent part:

(A) Request for admission. A party may serve upon any other party a written request for the admission, for purpose of the pending action only, of the truth of any matters within the scope of Rule 26(B) set forth in the request, that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. ... The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within a period designated in the request, not less than twenty-eight days after service thereof or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney.

***

(B) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. ...

10. Ohio Civil Rule 37 provides in pertinent part:

37(B) ... In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court expressly finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

***

(D) ... The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(C).

11. Ohio Civil Rule 56 provides in pertinent part:

(C). ... Summary judgment shall be rendered forthwith if the pleading, depositions, answers to interrogatories, written admis-

sions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in his favor. ...

12. Ohio Disciplinary Rule 7-102 provides:

DR 7-102. REPRESENTING A CLIENT WITHIN THE BOUNDS OF THE LAW

(A) In his representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal, shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

13. Common Pleas Superintendence Rule 4 provides in pertinent part:

For the purpose of these rules, the individual assignment system is that system whereby, upon the filing in, or transfer to, a division of the court of a civil case,...a case is immediately assigned by lot to a judge thereof, who thus becomes primarily responsible for the determination of every issue and proceeding in the case until its termination.

***

In any instance where a previously filed and dismissed case is refiled, that case shall be reassigned to the judge originally assigned by lot to hear it; unless, for good cause shown, that judge is precluded from hearing the case.

14. Ohio Revised Code § 2921.11 provides as follows:

Perjury

(A) No person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material.

(B) A falsification is material, regardless of its admissibility in evidence, if it can affect the course or outcome of the proceeding. It is no defense to charge under this section that the offender mistakenly believed a falsification to be immaterial.

(C) It is no defense to a charge under this section that the oath or affirmation was administered or taken in an irregular manner.

(D) Where contradictory statements relating to the same material fact are made by the offender under oath or affirmation and within the period of the statute of limitations for perjury, it is not necessary for the prosecution to prove which statement was false, but

only that one or the other was false.

(E) No person shall be convicted of a violation of this section where proof of falsity rests solely upon contradiction by testimony of one person other than the defendant.

(F) Whoever violates this section is guilty of perjury, a felony of the third degree.

15. Ohio Revised Code § 2921.12 provides as follows:

Tampering with evidence

(A) No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following:

(1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation;

(2) Make, present, or use any record, document, or thing, knowing it to be false and with purpose to mislead a public official who is or may be engaged in such proceeding or investigation, or with purpose to corrupt the outcome of any such proceeding or investigation.

(B) Whoever violates this section is guilty of tampering with evidence, a felony of the third degree.

16. Ohio Revised Code § 2923.03 (A) and (B) provide as follows:

Complicity

(A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

(1) Solicit or procure another to commit the offense;

(2) Aid or abet another in committing the offense;

(3) Conspire with another to commit the offense in violation of section 2923.01 of the Revised Code;

(4) Cause an innocent or irresponsible person to commit the offense.

(B) It is no defense to a charge under this section that no person with whom the accused was in complicity has been convicted as a principal offender.

STATEMENT OF THE CASE

Since early 1988, Respondent Jamestown Village Condominium Owners Association has filed a succession of sham and frivolous lawsuits against Petitioner Market/Media Research, Inc., in state courts alleging breaches of contractual obligations arising from various provisions of the condominium declaration and by-laws. All of these "breaches" are alleged to have occurred prior to the filing of the first lawsuit in which final judgment was entered by the trial court in favor of Market/Media and against Jamestown and affirmed on appeal. (App. 6-11)

It is well settled under Ohio law that although a "right of action" may arise from each separate act or omission which constitutes an alleged breach of an agreement, "a plaintiff may maintain only one action to enforce any such rights existing at the time such action is commenced," Markota v. East Ohio Gas Co. (1951), 154 Ohio St. 546, 97 N.E. 2d 13, paragraph 3 of the syllabus, explained at 549-551; Cockley v. Bruckner (1896), 54 Ohio St. 214, 44 N.E. 590, paragraphs 2 and 4 of the syllabus; James v. Allen County, 44 Ohio St. 226 (1886); Covington and Cincinnati Bridge Co. v. Sargent, 27 Ohio St. 233 (1875); Ohio Natl. Life Ins. Co. v. Struble, 80 Ohio App. 531, 536-537, 76 N.E.2d 420, 423 (1947); Boswell v. Security Life Ins. Co., 26 Ohio Circuit Court (N.S.) 385, 386-387 (1916).

It is equally well settled that a writ of prohibition will lie to end "a continuing and vexatious abuse of the judicial process" by plaintiffs "wrongfully attempting to relitigate claims and issues which have already been decided adversely to them." State, ex rel. Stark v. Summit Cty. Court of Common Pleas (1987), 31 Ohio St.3d 324, 325, 511 N.E.2d 115, 116; Commercial Savings Bank v. Wyandot Cty. Court of Common Pleas (1988), 35 Ohio St.3d 192, 519 N.E.2d 647; and to prevent any judge, other than the one who first acquired jurisdiction over the parties and the subject matter, from usurping that jurisdiction. State, ex rel. Largent v. Fisher, 43 Ohio St.3d 160, 161-162, 540 N.E.2d 239-240 (1989); State, ex rel. Connor v. McGough, 46 Ohio St.3d 188, 192, 546 N.E.2d 407, 410 (1989).

Jamestown's Admissions

With its complaint, Market/Media served upon Jamestown its first set of requests for admissions, requests for production of documents and interrogatories (App. 26-32), to which Jamestown never responded. Later a second request for admissions (App. 33-39) was served and again Jamestown failed to answer within the time prescribed by rule and specified in the request.

> When [the party upon whom requests for admissions were served] failed to answer the requests, the admissions became facts of record which the court must recognize.
>
> A request for admission can be used to establish a fact, even if it goes to the heart of the case. This is in accord with the purpose of the request to admit -- to resolve potentially disputed issues and thus to expedite the trial. See St. Paul Fire & Marine Ins. Co. v. Battle (1975), 44 Ohio App.2d 261, 269.
>
> Any matter admitted under Civ. R. 36 is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Civ.R. 36(B). Cleveland Trust Co. v. Willis (1985), 20 Ohio St.3d 66, 67, 485 N.E.2d 1052 (per curiam).

Under the Willis Rule[1], Jamestown admitted that it had filed four lawsuits alleging breaches of various contractual obligations all of which had accrued prior to the filing of the first action and all of which, under the doctrine of Markota v. East Ohio Gas Co. (1951), 154 Ohio St. 546, 97 N.E.2d 13, were barred by the final judgment rendered in Jamestown II. The admissions further established that Jamestown's pattern of conduct "constitutes a continuing and vexatious abuse of the judicial process by Respondent Jamestown prohibited by Commercial Savings Bank v. Wyandot Cty. Court of Common Pleas (1988), 35 Ohio St.3d 192 and State, ex rel. Stark v. Summit Cty. Court of Common Pleas (1987), 31 Ohio St.3d 324." (App. 39)

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[1] The truth of the matters established by Jamestown's admissions is also attested by the Affidavit of Robert E. L. Rhodes, III (App. 48-71).

Jamestown's Bad Faith and Fraud

Moreover, the admissions established Jamestown's persistent bad faith and fraudulent abuse of the judicial system.

Jamestown did not just mistakenly file a succession of lawsuits when it was entitled to file only one. Its conduct was part of a calculated plan by Jamestown and its attorney to deceive the courts, to subject Market/Media to ruinous legal expense and ultimately to deprive Market/Media of its property by judgments obtained by fraud.

In Jamestown I and II, Respondent alleged that its Board had never received the required notice of the terms of sale when Market/Media purchased a unit in the condominium and had never waived its right of first refusal to purchase the unit. When the court ordered Jamestown "to provide evidence and affidavits, if any, as to whether the Board actually waived its option" to purchase the unit in question (App. 12), Jamestown concealed from the court, inter alia, the accounting records which showed that it had in fact recognized Market/Media as the unit owner a month before the contract for sale was signed and had billed Market/Media for maintenance fees for some five-and-a-half years before filing the suit. Ohio Revised Code 2921.12.

While that matter was pending in the trial court, respondent filed a third suit, Jamestown III, and in order to obtain a different judge filed a fraudulent Case Designation Form (App. 24-25) falsely certifying that the new case was not related to any other case then pending or previously decided in that Court. The third suit sought foreclosure on a fraudulent lien filed by Jamestown, purportedly based on the records it had concealed in Jamestown II. Market/Media filed a request for production of those records; Jamestown ignored it. The court granted Market/Media's motion to compel (App. 13); Jamestown ignored the order. Market/Media filed a motion for default judgment; Jamestown told the court it would comply with the previous order and the court, on that assurance, denied the motion for default judgment; Jamestown, however, never produced the records. Instead, it filed at various times three false and conflicting affidavits attesting what those records would "show." The jurats of two of these perjurious affidavits were executed by Jamestown's attorney and the

third by Jamestown's attorney's secretary at his direction. Ohio Revised Code 2921.11 and 2923.03; Ohio Disciplinary Rule 7-102.

In Jamestown IV (filed in the Rocky River Municipal Court while Jamestown III was pending in the Court of Common Pleas and while Jamestown II was on appeal) respondent relied again on the accounting records it had concealed in Jamestown II but took yet another contradictory position with regard to what the accounting records, which it still refused to produce, "showed."

Clearly a plaintiff concealing material evidence from one court in order to take contradictory positions with regard to it in other courts is barred in limine by the clean hands doctrine. Keystone Driller Co. v. General Excavator Co., 290 U.S. 240, 244-247, 54 S.Ct. 146, 147-148 (1933); Goldberger v. Bexley Properties (1983), 5 Ohio St.3d 82, 84-85, 448 N.E.2d 1380, 1383; Kinner v. Lake Shore & Michigan Southern Ry. Co. (1904), 69 Ohio St. 339, 343-345, 69 N.E. 614, 615.

The Rocky River Court ultimately concluded that Jamestown IV was in part duplicative of Jamestown III and in part barred by the statute of limitations and ordered it transferred to the Court of Common Pleas at Jamestown's expense to be consolidated with Jamestown III. (App. 14-15)

The Court of Common Pleas, however, assigned the case to yet another judge in clear violation of the doctrine of the law of the case and in equally clear violation of Common Pleas Superintendence Rule 4. Berger v. Berger, 3 Ohio App.3d 125, 128, 443 N.E.2d 1375, 1379 (1981). All motions to transfer and consolidate these fragments before the original judge who alone had jurisdiction, State, ex rel. Largent v. Fisher, 43 Ohio St.3d 160, 161-163, 540 N.E.2d 239, 240-241 per curiam, were perfunctorily denied, usually by judges who were not authorized to rule on the motions.

In Jamestown III, respondent submitted a draft order for the appointment of a receiver for Market/Media's unit, falsely representing that it had been submitted to Market/Media's attorney for approval as required by local rule. Market/Media first learned of it when the order, signed by the judge, was served. Market/Media moved to vacate the order on grounds that it had been obtained by fraud on the court, but the court never ruled on the motion. The order required the receiver to post a $25,000.00 bond and Market/Media to

pay "rent" on its property during the pendency of the litigation.

While Market/Media's original action in prohibition was pending in the Supreme Court of Ohio, Jamestown and the "receiver" filed a joint motion in Jamestown III to evict Market/Media from its property. Market/Media's response gave notice that the receiver had never posted the bond and had never qualified under the terms of the court's order of appointment. Jamestown thereafter caused two false documents to be filed, a Receiver's Reply and a Plaintiff's Reply, both of which misrepresented to the court that the bond had been posted. Market/Media then filed a copy of the docket which established that in fact no bond had ever been posted.

Finally, Jamestown's admissions in the prohibition action (App. 39) established:

> 16. ...that the pattern of conduct documented herein constitutes a continuing and vexatious abuse of the judicial process by Respondent Jamestown prohibited by Commercial Savings Bank v. Wyandot County Court of Common Pleas (1988), 35 Ohio St.3d 192 and State, ex rel. Stark v. Summit County Court of Common Pleas (1987), 31 Ohio St.3d 324,

and

> 17. ...that the pattern of conduct evidenced by Jamestown and Jamestown's attorney Duffy in these proceedings constitutes bad faith in the conduct of litigation and fraudulent abuse of the judicial process sanctionable under the inherent powers of the courts as delineated in the recent decision of the United States Supreme Court in Chambers v. NASCO, Inc., --- U.S. ---, [111 S.Ct. 2123], 59 USLW 4595 (1991).

Disposition in the Supreme Court of Ohio

The Supreme Court of Ohio ignored Jamestown's admissions, disregarded the substantive and procedural law of the state [2] and the prior controlling decisions of this Court, and dismissed the action. Although the order of dismissal (App. 3) states that the court based its decision "Upon consideration of...relator's... suggestion of mootness," the record shows that relator never filed such a document. Nevertheless the court obstinately refused to reconsider an order based on a plain error called to its attention in the motion for rehearing and denied that motion without addressing either its misstatement of the record or any of the federal constitutional questions timely raised in the motion for rehearing. Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 677-678, 50 S.Ct. 451, 453 (1930).

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[2] Ohio Constitution, Article I, Section 16 and Article IV, Section 2 (B) and Section 3; Ohio Supreme Court Rule VIII, Section 1; Ohio Civil Rules 6, 12, 34, 36, 37, and 56 are the pertinent provisions. The Ohio Constitutional provisions were effiectively evaded when the Ohio Supreme Court denied Market/Media's motion to stay proceedings (App. 72) in the Court of Common Pleas during the pendency of the action in prohibition. (App. 4).

REASONS FOR GRANTING CERTIORARI

THE ORDER OF THE SUPREME COURT OF OHIO DISMISSING PETITIONER'S ORIGINAL ACTION IN PROHIBITION DENIES PETITIONER DUE PROCESS AND EQUAL PROTECTION OF THE LAWS CONTRARY TO THE PRIOR DECISIONS OF THIS COURT AND IS BASED ON A PLAIN MISSTATEMENT OF THE RECORD WHICH THE COURT OBSTINATELY REFUSED TO CORRECT WHEN THE MISTAKE WAS BROUGHT TO ITS ATTENTION ON MOTION FOR REHEARING.

In Chambers v. NASCO, Inc., --- U.S. ---, 111 S. Ct. 2123 (1991), this Court (quoting Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 at 246) observed that "tampering with the administration of justice in this manner...involves more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." Chambers, 111 S.Ct. at 2132. "[T]he ability to fashion an appropriate sanction for conduct which abuses the judicial process" (Id. at 2133) "is necessary to the integrity of the courts." Id. at 2132.

An "appropriate sanction" when a party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons" is one which will serve "the dual purpose of 'vindicat[ing] judicial authority...and mak[ing] the prevailing party whole for expenses caused by his opponent's obstinacy.'" Id. at 2133.

To the average citizen, the threat of a lawsuit is the threat of financial ruin. When a party couples the threat of a lawsuit with a threat "to appeal adverse decisions" as Jamestown did, its "bad faith", "vexatious" and "oppressive" intent are palpable.

To permit courts to ignore such abuses of the judicial process is to permit the "institutions set up to protect and safeguard the public" to be used as instruments of fraud and oppression by the dishonest. Few citizens could bear the tens of thousands of dollars in litigation expenses inflicted by Jamestown on Market/Media, fewer still the more than $1 million incurred by NASCO in the Chambers case. Faced with the prospect of them, most are forced to capitulate.

In resisting the succession of sham and frivolous lawsuits filed by Jamestown, Market/Media has already incurred legal fees and expenses exceeding the purchase price of the unit, but has yet to recover any of these expenses from Jamestown, even though Ohio has long followed the American Rule. Roberts v. Mason, 10 Ohio St. 277 (1859); Pope v. Pollock, 46 Ohio St. 367, 21 N.E. 356, 357-358 (1889); Sorin v. Board of Education, 46 Ohio St.2d 177, 181, 347 N.E.2d 527, 530 (1976); State, ex rel. Durkin v. Ungaro, 39 Ohio St.3d 191, 193, 529 N.E.2d 1268, 1270 (1988).

The Court should use this case to make clear that the American Rule requires a court to make a party whole for expenses caused by an opponent's bad faith, vexatious, wanton and oppressive conduct, in each and every case in which bad faith, vexatious, wanton and oppressive conduct is proved. For just as the American Rule protects litigants who in good faith invoke the jurisdiction of the courts to vindicate their rights, so too it protects the opponent from a litigant's bad faith and fraudulent abuse of the judicial process.

If a party files a multiplicity of duplicative lawsuits in bad faith, submits fraudulent designation forms concealing related litigation pending in the court in order to obtain a different judge in violation of the Superintendence Rules, takes contradictory positions with respect to the same material facts in three different courts, conceals material evidence in violation of court orders, discovery rules and the statutory law, submits perjurious affidavits, obtains by fraud an order seizing the property of an opponent without opportunity for hearing by falsely representing that notice of the order has been given and attempts to obtain possession of the property by falsely representing to the court that a required bond has been posted when the court's docket shows that it has not --- surely such a party is vexatiously abusing the judicial process.

And if the courts fail and refuse to protect the party so abused, surely they deny the injured party due process and equal protection of the laws in the most fundamental sense.

"Judicial" proceedings which disregard both the procedural and substantive law and tolerate such abuses are "mere mockeries", "a solemn fraud,...clothed with all the forms of a judicial proceeding." Windsor v. McVeigh, 93 U.S. 274, 281, 23 L.Ed. 914, 918 (1876) quoting from an opinion of Justice Story.

But what is the remedy when the highest court of a state from which there is no appeal of right refuses to grant to the injured party the relief authorized by law which it grants to others in similar circumstances, refuses to follow the controlling decisions of this Court which have been called to its attention, disregards the applicable procedural rules and bases its decision on a false recital of the record which it obstinately refuses to correct on motion for rehearing?

In State, ex rel. Pfeiffer v. Common Pleas Court of Lorain County, 13 Ohio St.2d 133, 235 N.E.2d 232 (1968), the Supreme Court of Ohio stated:

> We think that it is within the inherent powers of a court to deny relief to a litigant who refuses to comply with the orders of the court, and in effect defies the orders of a court. This power derives from the inherent power of courts to do all things necessary to the administration of justice and to protect its own powers and processes and the rights of those who invoke its processes. See State ex rel. Raydel v. Raible, 92 Ohio App. 537, 110 N.E.2d 139. It inheres in the constitutional grant of judicial power to the courts.

In Mentor Lagoons, Inc. v. Rubin, 31 Ohio St.3d 256, 510 N.E.2d 379 (1987), the Supreme Court of Ohio reminded each of the state's courts of its "authority and duty to see to the ethical conduct of attorneys", "to regulate the practice before it and to protect the integrity of its proceedings ...." Id. at 259 (quoting Royal Indemnity Co. v. J.C. Penney Co., 27 Ohio St.3d 31, 33-34, 501 N.E.2d 617, 620 (1986), a case which also involved tampering with evidence).

In the instant case, however, the Supreme Court of Ohio disregarded both the substantive and procedural law of the state and the prior controlling decisions of this court.

> In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted (Civ.R. 12(B)(6), it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. (Conley v. Gibson, 355 U.S. 41, followed.) O'Brien v. University Community Tenants Union, Inc. (1975) 42 Ohio St.2d 242, 327 N.E.2d 753.

Clearly, the complaint in this case (App. 17-23) could not properly have been dismissed for failure to state a claim on which relief can be granted.

The complaint alleges, and Jamestown's admissions establish, that Jamestown filed a succession of lawsuits arising from alleged breaches of the condominium declaration and by-laws, all of which purportedly occurred prior to the filing of the first suit. That suit has been finally decided in favor of Market/Media and against Jamestown and is therefore a bar to each of the subsequent suits. Under settled Ohio law, Market/Media is entitled to a writ of prohibition.

The refusal of the Supreme Court of Ohio to grant to Market/Media the same relief it grants to others in similar circumstances within its jurisdiction denies Market/Media the equal protection of the laws in violation of the Fourteenth Amendment contrary to this Court's prior decisions in Barbier v. Connolly, 113 U.S. 27, 31, 5 S.Ct. 357, 359 (1884) and Truax v. Corrigan, 257 U.S. 312, 334, 42 S.Ct. 124, 130 (1921). These decisions were timely brought to the attention of the Supreme Court of Ohio in the motion for rehearing. App.

The complaint in prohibition further alleges that Jamestown's subsequent suits are based on evidence it concealed in the earlier suits in direct violation of a court order. Permitting the subsequent suits to proceed is contrary in this Court's decision in Keystone Driller Co. v. General Excavator Co., 290 U.S. 240, 54 S.Ct. 146 (1933), which held that such conduct violates the clean hands doctrine and is therefore a bar in limine to subsequent suits. Id. 290 U.S. at 245, 54 S.Ct. at 147. This decision was timely brought to the attention of the Supreme Court of Ohio in the motion for rehearing. (App. 42)

Nevertheless, the Supreme Court of Ohio entered the following order (App. 3) dismissing the action:

> This cause originated in this Court on the filing of a complaint for a writ of prohibition. Upon consideration of respondents' motion to dismiss, relator's motions to reconsider protective order, to deem matters admitted, suggestion of mootness, and to compel discovery...

IT IS ORDERED by the Court that said motions to dismiss be, and the same are hereby, sustained.

IT IS FURTHER ORDERED by the Court that this case be, and the same is hereby, dismissed.

The order shows on its face that the court considered "matters outside the pleading". Under such circumstances, Rule 12 requires that the motions to dismiss be treated as motions for summary judgment and that the court, after notice to the parties and after affording them reasonable opportunity to present evidentiary materials made pertinent by Rule 56, "shall consider only such matters as are specifically enumerated in Rule 56." State, ex rel. Freeman v. Morris, 62 Ohio St.3d 107, 109, 579 N.E.2d 702, 703 (1991).

The order shows on its face that the court considered matters other than those "specifically enumerated in Rule 56" and therefore the court could not properly have granted summary judgment in the case, even if the required notice had been given. Id.

The action of the Supreme Court of Ohio is made particularly offensive to the Constitution by the fact that Freeman was decided between the time the court dismissed Market/Media's action in prohibition in violation of these procedural rules and the time it denied the motion for rehearing which raised precisely the arguments adopted by the court in Freeman. (App. 42-43). Brinkerhoff-Faris, 281 U.S. at 682, 50 S.Ct. at 453.

In Leis v. Flynt, 439 U.S. 438, 441, 99 S.Ct. 698, 700 (1979), an Ohio case, this Court held that rights "derived from statute or legal rule" under state law are protected by the Fourteenth Amendment. And in Business Guides, Inc. v. Chromatic Communications Enterprises, Inc., --- U.S. ---, 111 S.Ct. 922, 928 and 932 (1991), the Court made clear that even a court which prescribes procedural rules may not abrogate them except through its regular rule-making procedures (citing Pavelic & LeFlore v. Marvel Entertainment Group, --- U.S. ---, 110 S.Ct. 456 at 460 (1989)). These cases were likewise cited in the motion for rehearing (App. 45-46).

The order, of course, does recite one apparently proper ground for dismissing the action: "relator's...suggestion of mootness." A suggestion of mootness, filed by relator, would have been the equivalent of a voluntary dismissal with leave of court. The record, however, clearly shows that the relator (Market/Media) never filed any suggestion of mootness and that the statement to the contrary in the court's order of dismissal is false. This renders the dismissal order constitutionally infirm. Postal Telegraph Cable Co. v. Newport, 247 U.S. 464, 473-474, 38 S.Ct. 566, 570 (1918).

(Jamestown did file a suggestion of mootness (App. 80-83), but the court under the Freeman Rule could not properly have considered it. Moreover, Jamestown's "suggestion" was simply one more effort to mislead the courts by suggesting that a stipulation acknowledging that Jamestown had filed duplicative actions in different courts rendered the action in prohibition moot while another improper suit was still pending. (App. 84.)

Market/Media filed a timely motion for rehearing in which the court's mistake was called to its attention and in which the federal constitutional questions upon which this petition for certiorari is sought were timely raised. (App. 40-71) Brinkerhoff-Faris, 281 U.S. at 677-678, 50 S.Ct. at 453. The motion for rehearing was perfunctorily denied. (App. 18)

These two orders of the Supreme Court of Ohio raise important questions concerning the responsibilities of a court from which no right of appeal lies and the only relief available to a litigant is by petition to this Court for a discretionary writ. Petitioner will ask this Court to adopt a rule that failure of such a court to grant a motion or petition for rehearing and to reconsider an order or judgment based on a clearly false statement of the record or to address its alleged failure to follow the controlling decisions of this Court and other applicable rules of law will be grounds for summary remand pursuant to Supreme Court Rule 16.1.

REFUSAL OF THE SUPREME COURT OF OHIO TO HEAR THE PROHIBITION ACTION ON ITS MERITS WOULD DEPRIVE THIS COURT OF ITS APPELLATE JURISDICTION OVER THE FEDERAL CONSTITUTIONAL ISSUES RAISED.

Finally, if the Supreme Court of Ohio is permitted to dismiss the prohibition action without hearing it on the merits, this Court will be deprived of its appellate jurisdiction. For like Humpty-Dumpty, this case can never be put back together again for appellate review if its fragments are allowed to proceed separately through the trial courts.

Moreover, it is requiring Market/Media to litigate endlessly matters that have already been determined conclusively in its favor which violates petitioner's rights to due process and equal protection of the laws under the Fourteenth Amendment.

CONCLUSION

For all the foregoing reasons, this Court should grant the petition for certiorari and summarily reverse the order of the Supreme Court of Ohio dismissing the action in prohibition pursuant to Supreme Court Rule 16.1.

Respectfully submitted,

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APPENDIX

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The Supreme Court of Ohio

Case No. 90-1588

1991 TERM

To wit: October 23, 1991

Market/Media Research, Inc.,
Relator,

v.

Cuyahoga County Court of Common Pleas et al.,
Respondents.

IN PROHIBITION
E N T R Y

This cause originated in this Court on the filing of a complaint for a writ of prohibition. Upon consideration of respondents' motions to dismiss, relator's motions to reconsider protective order, to deem matters admitted, suggestion of mootness, and to compel discovery,

IT IS ORDERED by the Court that said motions to dismiss be, and the same are hereby, sustained.

IT IS FURTHER ORDERED by the Court that this cause be, and the same is hereby, dismissed.

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

The Supreme Court of Ohio

Case No. 90-1588

1990 TERM

To wit: October 10, 1990

Market/Media Research, Inc.,
Relator,

v.

Cuyahoga County Court of Common Pleas et al.,
Respondents.

IN PROHIBITION
E N T R Y

This cause originated in this Court on the filing of a complaint for a writ of prohibition. Upon consideration of relator's motion to stay proceedings,

IT IS ORDERED by the Court that said motion be, and the same is hereby, denied.

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

The Supreme Court of Ohio

Case No. 90-1588

1991 TERM

To wit: August 28, 1991

Market/Media Research, Inc.,
Relator,

v.

Cuyahoga County Court of Common Pleas et al.,
Respondents.

IN PROHIBITION
E N T R Y

This cause originated in this Court on the filing of a complaint for a writ of prohibition. Upon consideration of respondents' motion for protective order,

IT IS ORDERED by the Court that said motion for protective order be, and the same is hereby, granted.

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
NOS. 56516 & 56517

THE JAMESTOWN VILLAGE CONDOMINIUM OWNERS ASSOCIATION
Plaintiff-appellant
vs.
STEPHEN C. KLAUSMAN, ET AL.,
Defendants-appellees

JOURNAL ENTRY
and
OPINION

DATE OF ANNOUNCEMENT OF DECISION: JANUARY 25, 1990

CHARACTER OF PROCEEDING: Civil appeal from Common Pleas Court Case Nos. 143,483 and 149,815

JUDGMENT: AFFIRMED

DATE OF JOURNALIZATION:

APPEARANCES:

For plaintiff-appellant: John J. Duffy, 23823 Lorain Road - No. 210, North Olmsted, Ohio 44070

For defendant-appellee, Stephen C. Klausman: Stephen C. Klausman, 5 Buxton Drive, Columbia, South Carolina 29223

For defendant-appellee, Market/Media Research, Inc.: Charles J. Pawlukiewicz, Linda C. Ashar, WICKENS, HERZER & PANZA, 1144 West Erie Avenue, P. O. Box 840, Lorain, Ohio 44052-0840

For defendant-appellee, Market/Media Research, Inc.: Robert Rhodes, 4779 Columbia Road, North Olmsted, Ohio 44070

NAHRA, J.:

Jamestown Village Condominium Owners' Association, Inc. (the "Association") is appealing the order of the trial court granting summary judgment in favor of Market/Media Research, Inc. ("Market/Media"). The Association contends there is a genuine issue of material fact regarding whether the appropriate notice of a contemplated sale of a condominium unit was given to its Board of Managers. Based on the evidentiary material submitted below, we conclude that although an issue of fact may exist as to whether written notice was given, the conduct of the Association in recognizing a new owner estopped it from utilizing the notice issue to void the sale and exercise its option to purchase the unit. We therefore affirm the judgment below.

On May 16, 1988, the Association filed a complaint for declaratory action requesting the court to declare the transfer of a condominium unit from Stephen Klausman to Market/Media null and void because Klausman had not given written notice of the contemplated sale to the Board of Managers. Market/Media moved to dismiss the complaint attaching evidentiary material. The trial court notified the parties it would treat Market/Media's motion to dismiss as a motion for summary judgment and requested further briefing and evidence.

Market/Media supplied the affidavits of Robert E. L. Rhodes, III, the President of Market/Media, James P. Violand, the attorney for Klausman, the seller of the condominium unit, and Harry L. Rockwood, the President of Continental Management Co. which was the management agent of the Association. Mr. Rhodes stated that in 1980 he leased unit 201 from Klausman and in the summer of 1982 he agreed to purchase the unit by land installment contract. The land installment contract was executed on October 8, 1982, but was effective in September. Beginning in September and October, 1982, the Association billed Market/Media for condominium maintenance fees and assessments. Mr. Rhodes also testified that in 1983 the Association elected him to

Mr. Violand, the attorney who prepared the purchase contract, testified in his affidavit that he sent written notice of the intended sale to the Association. He did not have a copy of the written notice since in his law practice he does not keep closed files longer than five years.

Mr. Rockwood stated in his affidavit that the Board of Managers was informed of the contemplated sale of unit 201 in late July or early August, 1982. To the best of his recollection, Mr. Violand sent a letter. Mr. Rockwood no longer had a copy of the letter since in 1984, when Continental's management contract expired, all records were transferred to the Board of Managers. Mr. Rockwood further testified that prior to the sale of unit 201, pursuant to a discussion of the Board of Managers, he allowed the thirty-day option period to expire. From the date of the sale the Board recognized Market/Media as the owner of unit 201 and billed Market/Media for monthly maintenance fees and special assessments. Last, Mr. Rockwood stated that in July, 1983, Robert Rhodes, the President of Market/Media, was elected to the Board of Managers.

The pertinent evidentiary material supplied by the Association included the affidavits of Elmer Ledvina and Alice Vrnak, members of the Board of Managers in 1982. Mr. Ledvina testified that to the best of his recollection the Board did not receive written notice of the contemplated sale of unit 201 by land contract and did not decline to purchase the unit or instruct Harry Rockwood to allow the option period to expire. Ms. Vrnak did not recall receiving written notice, discussing whether to waive the Association's first right of refusal or authorizing Rockwood to waive the right.

On September 7, 1988, the trial court granted Market/Media's motion for summary judgment. The Association timely appealed raising the following assignments of error which we will address collectively:

> I.THE TRIAL COURT ERRED BY GRANTING DEFENDANT MARKET/MEDIA'S MOTION FOR SUMMARY JUDGMENT WITHOUT SETTING FORTH ANY CONSTRUCTION OF THE DOCUMENT UNDER CONSIDERATION.

II.THE TRIAL COURT ERRED IF IT GRANTED SUMMARY JUDGMENT ON THE GROUNDS THAT THE SELLER KLAUSMAN HAD IN FACT GIVEN THE NOTICE PRESCRIBED BY THE DECLARATION.

III.THE TRIAL COURT ERRED IF IT GRANTED DEFENDANTS MOTION FOR SUMMARY JUDGMENT ON THE GROUNDS THAT WRITTEN NOTICE OF THE INTENT TO SELL A CONDOMINIUM UNIT IS NOT REQUIRED IF THE ASSOCIATION HAS OBTAINED ACTUAL KNOWLEDGE THAT THE UNIT HAS BEEN SOLD TO A LAND CONTRACT VENDEE.

Summary judgment will be rendered in a case when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Ohio R. Civ. P. 56(C). A genuine issue of material fact exists when the relevant factual allegations contained in the documentary evidence attached to a summary judgment motion and opposition brief are in conflict. Duke v. Sanymetal Products Co. (1972), 31 Ohio App. 2d 78, 286 N.E.2d 324. Summary judgment disposition is appropriate when reasonable minds can come to but one conclusion after reviewing the evidence and that conclusion is adverse to the non-moving party. Ohio R. Civ. P. 56(C).

Item 19.A. of the Declaration of Condominium Ownership for Jamestown Village Condominium provides as follows:

Any owner other than Declarant, or a mortgagee who purchases a unit at foreclosure sale or takes a deed in lieu of foreclosure, who wishes to sell or lease his unit ownership shall give to the Board of Managers no less than thirty (30) days prior written notice of the terms of any contemplated sale or lease, together with the name and address of the proposed purchaser or lessee. The members of the Board of Managers acting on behalf of consenting unit owners as hereinafter provided, shall at all

times have the first right and option to purchase or lease such unit ownership upon the same terms, which option shall be exercisable for a period of thirty (30) days following the date of receipt of such notice; provided, however, that if the proposed purchase or lease shall be for a consideration which the Board of Managers deems inconsistent with the bona fide fair market value of such unit ownership, the Board of Managers may elect to exercise such option in the manner, within the period, and on the terms set forth in Section B of this Item 19. If said option is not exercised by the Board of Managers within the aforesaid option period, the owner may, at the expiration of said period, contract to sell or lease such unit ownership to the proposed purchaser or lessee named in such notice upon the terms specified therein.

The Association contends summary judgment was inappropriate because an issue of fact exists as to whether it received written notice of the contemplated sale of unit 201.

Whether or not the Association received written notice is immaterial if the Association waived this term or precondition. A party may waive a term of a contract by its acts or conduct. English v. National Casualty Co. 1941), 138 Ohio St. 166, 34 N.E.2d 31; Ohio Farmers Insurance Co. v. Cochran (1922), 104 Ohio St. 427 (Syl. 3), 135 N.E. 537; Ohio Turnpike Commission v. Personnel Data Systems, Inc. (Jan. 24, 1985), Cuyahoga App. No. 48412, unreported. In this case, although an issue of fact may exist as to whether the Association received written notice, no issue of fact exists as to whether the Association waived the written notice requirement if it did not in fact receive such notice. The Association billed the new owner, Market/Media, for maintenance fees and special assessments. Mr. Rhodes, the President of Market/Media, was elected to the Board of Managers for a two-year term. These actions, unrebutted by evidentiary material below, are sufficient to constitute a waiver of the written notice requirement for the contemplated sale of unit 201.[1] Summary judgment in favor of Market/Media was proper.

---

[1] In any event, the Association would be estopped from voiding the sale of unit 201 when it had actual knowledge of the purchase in 1982 and did not seek to exercise its right until 1986 or seek judicial intervention until 1988.

Accordingly, these assignments of error are overruled.

The judgment of the trial court is affirmed.

It is ordered that appellees recover of appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal. It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution. A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

/s/ Joseph J. Nahra
JOSEPH J. NAHRA
JUDGE

PATTON, C.J., and DYKE, J., CONCUR.

N.B. This entry is made pursuant to the third sentence of Rule 22(D), Ohio Rules of Appellate Procedure. This is an announcement of decision (see Rule 26). Ten (10) days from the date hereof this document will be stamped to indicate journalization, at which time it will become the judgment and order of the court and time period for review will begin to run.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CASE NO. 143483
JUDGE MICHAEL J. CORRIGAN

THE JAMESTOWN VILLAGE CONDOMINIUM OWNERS ASSOCIATION

Plaintiff

vs.

STEPHEN C. KLAUSMAN, et al.,

Defendants

ORDER
DATE 5/26/88

Defendant's motion to dismiss will be treated as a motion for summary judgment. The court finds genuine issues exist as to whether the Board requires written notice of the intent to sell before it is required to exercise its option or, whether actual notice is sufficient. Plaintiff is ordered to provide evidence and affidavits, if any, as to whether the Board actually waived its option. Said evidence and affidavits are to be filed within 15 days of this Order.

/s/ Michael J. Corrigan
Judge

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CASE NO. 154270

JUDGE TIMOTHY E. McMONAGLE

JAMESTOWN VILLAGE CONDOMINIUM
OWNERS ASSOCIATION

Plaintiff

vs.

MARKET-MEDIA RESEARCH, INC., et al.

Defendants

ORDER
DATE 6/5/89

Defendant's Market/Media Research, Inc. Motion to Compel Discovery is granted.

/s/ Timothy E. McMonagle
JUDGE

EXHIBIT B

ROCKY RIVER MUNICIPAL COURT
ROCKY RIVER, OHIO

CASE NO. 89CVG 1213

JUDGE MAUREEN A. GRAVENS

JAMESTOWN VILLAGE CONDOMINIUM
OWNERS ASSOCIATION

Plaintiff

v.

MARKET/MEDIA RESEARCH, INC.

Defendant

JOURNAL ENTRY

This cause came on for hearing on defendant's alternative motion to dismiss which has been treated by this Court as one for summary judgment. The Court also has before it plaintiff's brief in opposition to defendant's motion to dismiss and defendant's reply brief. Also before the Court is defendant's motion for reconsideration of bond requirement.

The Court upon review of the above-mentioned documents finds that the overriding consideration governing whether this Court or Cuyahoga Common Pleas Court should adjudicate the causes of action raised herein is that of comity between judicial tribunals. As between courts of concurrent jurisdiction,

the tribunal whose power is first involved by the institution of proper proceedings acquires jurisdiction to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties. See State ex rel. Judson v. Spahr, 33 Ohio St 3d 111, 515 N E 2d 911 (1987), 22 OJUR 3d § 321 Courts and Judges (1980) and 1 OJUR 3d § 541 Actions (1977). There are exceptions to this general rule. See Konicek vs Elyria, 37 Ohio App 3d 43 (Lorain Cty, 1987).

In the instant case, the plaintiff's second cause of action certainly concerns the same subject matter as previously raised by plaintiff in its complaint in Cuyahoga County Common Pleas Court Case No. 154270, now pending before Judge Timothy E. McMonagle.

Given the fact that the Court of Common Pleas also has jurisdiction to hear forcible entry and detainer actions, [Seventh Urban, Inc. vs. University Circle 67 Ohio St 2d 19 (1981)], this Court treats defendant's motion for summary judgment as one to transfer and consolidate the causes of action raised herein with Common Pleas Case No. 154270, at Plaintiff's costs. Failure to do so within fourteen days of this entry will result in dismissal of this action.

Plaintiff's presentation of its first cause of action for forcible entry and detainer to Common Pleas Court, should be evaluated in light of defendant's possible assertion of O.R.C. 1923.01(B) therein.

Defendant's motion for reconsideration of bond requirement set forth in this Court's order of Sept. 13, 1989 is granted. Said bond requirement is vacated herein subject to any subsequent orders of the Common Pleas Court of Cuyahoga County.

IT IS SO ORDERED.

/s/ Maureen A. Gravens
JUDGE

MAUREEN A. GRAVENS

DATED: November 9, 1989

JOURNALIZED
ROCKY RIVER MUNICIPAL COURT
NOV 09 1989
BEN K. WRIGHT CLERK OF COURT

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

NO. 180862

JAMESTOWN VILLAGE CONDOMINIUM ASSOCIATION
Plaintiff(s)

-vs-

MARKET/MEDIA RESEARCH, INC.
Defendant(s)

STIPULATION FOR DISMISSAL
AND JUDGMENT ENTRY

THE STATE OF OHIO)
) SS.
County of Cuyahoga)

We, the attorneys for the respective parties, do hereby stipulate Defendant to vacate garage spaces 24 & 25 by Midnight, November 1, 1990. Writ to issue on November 2, 1990 if Defendant has not so vacated.

The second cause of action is dismissed without prejudice on the understanding that a claim for the alleged amount due is pending in Case No. 154270, all without prejudice to Defendant Market/Media Research, Inc. in Cases Numbers 149815, 154270 and the Writ pending in Ohio Supreme Court Case No. 90-1588 entitled Market/Media Research, Inc. v. Common Pleas Court of

entitled Market/Media Research, Inc. v. Common Pleas Court of Cuyahoga County, and that the Court may enter an order accordingly, notice by the Clerk being hereby waived. Court will treat any viol of this order as contempt.
IT IS SO ORDERED

/s/ Terrence O'Donnell
Judge

/s/ John J. Duffy
Attorney for Plaintiff

/s/ Owen C. Neff
Attorney for Defendant

MARKET/MEDIA RESEARCH, INC.
By /s/ Robert E. L. Rhodes
President

RECEIVED FOR FILING
OCT 12 1990
GERALD R. FUERST, CLERK

(Civil Rule No. 41)

The Supreme Court of Ohio

Case No. 90-1588

1991 TERM

To wit: November 27, 1991

Market/Media Research, Inc.,
Relator,

v.

Cuyahoga County Court of Common Pleas et al.,
Respondents.

REHEARING ENTRY
(IN PROHIBITION)

IT IS ORDERED by the Court that rehearing in this case be, and the same is hereby, denied.

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

CASE NO. 90-1588

MARKET/MEDIA RESEARCH, INC.
4779 Columbia Road
North Olmsted, Ohio 44070

Relator,

-vs-

CUYAHOGA COUNTY COURT OF COMMON PLEAS
Justice Center-Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113

and

JAMESTOWN VILLAGE CONDOMINIUM
OWNERS ASSOCIATION
P.O. Box 16712
Rocky River, Ohio 44116

Respondents.

COMPLAINT

(ORAL HEARING REQUESTED)

Now comes MARKET/MEDIA RESEARCH, INC., and for its complaint states:

1) The JAMESTOWN VILLAGE CONDOMINIUM OWNERS ASSOCIATION ("JAMESTOWN") has filed a multiplicity of sham and frivolous actions against MARKET/MEDIA RESEARCH, INC. ("MARKET/MEDIA") all arising from the same controversy or subject matter and all seeking the same objective -- to dispossess MARKET/MEDIA of its unit in the condominium.

2) JAMESTOWN I, Cuyahoga County Common Pleas Case No. 143483, was filed on January 8, 1988, and assigned to the Honorable Michael J. Corrigan who dismissed the action without prejudice on May 6, 1988, after JAMESTOWN'S attorney failed to appear for a status call.

3) JAMESTOWN II, Cuyahoga Common Pleas Case No. 149815, asserting the identical claim, was filed on May 16, 1988, and assigned to the Honorable R. M. Lawther. The case was reassigned to Judge Corrigan pursuant to C.P. Sup. 4 on motion by MARKET/ MEDIA. Summary judgment was entered in favor of MARKET/MEDIA and against JAMESTOWN on September 6, 1988. JAMESTOWN appealed, and the judgment of the trial court was affirmed sub nom. JAMESTOWN VILLAGE CONDOMINIUM OWNERS ASSOCIATION v. KLAUSMAN (Jan. 25, 1990), Cuyahoga App. Nos. 56516 and 56517, unreported. JAMESTOWN concealed material evidence in violation of the court's order to produce it and motions to strike frivolous affidavits and to impose sanctions for discovery and Civil Rule 11 violations are now pending in JAMESTOWN II.

4) JAMESTOWN III, Cuyahoga Common Pleas Case No. 154270, was filed on August 16, 1988, while JAMESTOWN II was still pending in the trial court, and was assigned to the Honorable Timothy E. McMonagle. The Designation Form filed by JAMESTOWN'S attorney fraudulently denied the existence of related litigation. Exhibit "A".

5) JAMESTOWN IV, Rocky River Municipal Court Case No. 89-CVG-1213, was filed on August 22, 1989, while JAMESTOWN III was pending in the trial Court, and was assigned to the Honorable Maureen A. Gravens. Judge Gravens found that JAMESTOWN IV was in part duplicative of JAMESTOWN III and in part barred by statute of limitations and

ordered the matter transferred to the Court of Common Pleas at JAMESTOWN'S expense to be consolidated with JAMESTOWN III. (Exhibit B).

6) On reaching Common Pleas, JAMESTOWN IV was given Case No. 180862 and assigned to Judge Patricia A. Cleary. All of MARKET/MEDIA'S motions to transfer, reassign and consolidate have been denied. MARKET/MEDIA has no immediate right of Appeal.

FIRST CLAIM FOR RELIEF

7) Paragraphs 1-6 are incorporated by reference.

8) The claims presented in JAMESTOWN III were waived when not pleaded in JAMESTOWN I and II and are now res judicata.

9) MARKET/MEDIA has brought these facts to the attention of the trial court and notwithstanding the trial court is about to exercise its judicial power to determine a claim precluded by the doctrine of res judicata and barred by the claims preclusion doctrine.

10) Such action by the trial court is unauthorized by law and is prohibited by COMMERCIAL SAVINGS BANK v. WYANDOT CTY. COURT OF COMMON PLEAS (1988), 35 Ohio St. 3d 192 and STATE, ex rel. STARK v. SUMMIT CTY. COURT OF COMMON PLEAS (1987), 31 Ohio St. 3d 324.

11) JAMESTOWN'S repeated and malicious slanders of title have impaired the credit of MARKET/MEDIA and deprived it of needed working capital and permitting this case to go forward would result in injury for which MARKET/MEDIA has no adequate remedy in law.

SECOND CLAIM FOR RELIEF

12) Paragraphs 1-11 are incorporated by reference.

13) The trial court has ordered JAMESTOWN IV to go forward as a separate case and has set a date for a case management conference.

14) The ruling of Judge Gravens that the claims in JAMESTOWN IV are in part the same as the claims already pending in JAMESTOWN III and in part are barred by the applicable statute of limitations is the law of the case which the Court of Common Pleas is unauthorized by law to disregard.

15) Litigation of JAMESTOWN'S claims is precluded by the doctrine of res judicata and prohibited by this Court's decisions in COMMERCIAL SAVINGS BANK v. WYANDOT CTY. COURT OF COMMON PLEAS (1988), 35 Ohio St. 3d 192 and STATE ex rel. STARK v. SUMMIT CTY. COURT OF COMMON PLEAS (1987), 31 Ohio St. 3d 324.

16) JAMESTOWN'S vexatious abuses of judicial process have impaired the credit of MARKET/MEDIA and deprived it of needed working capital. Permitting this case to go forward would result in injury for which MARKET/MEDIA has no adequate remedy in law.

THIRD CLAIM FOR RELIEF

17) Paragraphs 1-16 are incorporated by reference.

18) MARKET/MEDIA has put on record facts establishing that JAMESTOWN has engaged in illegal, inequitable and reprehensible conduct with respect to the subject matter of JAMESTOWN III and IV.

19) The clean hands doctrine is a threshold consideration and the trial courts are not authorized by law to disregard those facts and permit JAMESTOWN to continue to use the courts as instruments of fraud and oppression against MARKET/MEDIA.

20) Permitting these cases to go forward would result in injury to MARKET/MEDIA for which it has no adequate remedy in law.

FOURTH CLAIM FOR RELIEF

21) Paragraphs 1-20 are incorporated by reference.

22) The Courts of Common Pleas are bound by C.P. Sup. R. 4 and are not authorized by law to disregard its provisions and permit fragments of the JAMESTOWN controversy to proceed as separate cases before judges other than the judge to whom the case was originally assigned and the judge who has exclusive jurisdiction to determine every substantive issue in the case.

23) JAMESTOWN'S conduct in filing as separate actions claims it could and should have asserted in JAMESTOWN I, and waived when it did not do so, is an attempt to defeat the purpose of C.P. Sup. R. 4 and go judge shopping. JAMESTOWN has achieved this result by fraudulently denying the existence of

related cases on the Designation Forms required to be filed with each new action brought in the CUYAHOGA COUNTY COURT OF COMMON PLEAS. E.g. Exhibit "A".

WHEREFORE, MARKET/MEDIA prays that a Writ of Prohibition be granted to prevent the CUYAHOGA COUNTY COURT OF COMMON PLEAS from proceeding with the vexatious actions now pending as Case Nos. 154270 and 180862 and that MARKET/MEDIA be awarded its reasonable expenses, including attorney's fees, incurred as a result of the frivolous conduct of JAMESTOWN in bringing and maintaining these vexatious actions.

Respectfully submitted,

SYNDER, NEFF AND CHAMBERLIN
720 Statler Office Tower
East Twelfth and Euclid Avenue
Cleveland, Ohio 44115
(216) 696-2630

BY
OWEN CALVIN NEFF 0034210
Attorney for Relator
Market/Media Research, Inc.

MOTION

STATE OF OHIO)
) SS
CUYAHOGA COUNTY)

The Relator hereby moves the Court for an Oral Hearing in this matter in accordance with Supreme Court Rule VIII, Section 12.

Respectfully Submitted,
OWEN CALVIN NEFF 0034210

EXHIBIT A

CASE DESIGNATION FORM
TO INDICATE THE CATEGORY OF THE CAUSE

NO. 154270
JUDGE TIMOTHY E. McMONAGLE

JAMESTOWN VILLAGE CONDOMINIUM
OWNERS ASSOCIATION

-vs-

MARKET-MEDIA RESEARCH, INC., et al.

Pending or Closed Related Case(s). If any, list case number and Judge.

Civil Categories: (Place (X) in one category only.)

1310	( )	Tort - Motor Vehicle Accident
1320	( )	Tort - vs. Property Owner
1330	( )	Tort - Product Liability
1340	( )	Tort - F.E.L.A.
1350	( )	Tort - Miscellaneous
1360	( )	Libel and Slander
1370	( )	Contract
1380	( )	Promissory Note
1390	( )	Cognovit
1400	( )	Equity
1410	( )	Mandamus
1420	( )	Habeas Corpus
1430	( )	Quo Warranto
1440	( )	Eminent Domain
1450	( )	Ejection, Recovery of Real Property
1460	(X)	Foreclosure Marshalling of Lien
1470	( )	Quiet Title
1480	( )	Partition

1490	( )	Foreign Attachment
1500	( )	Replevin
1510	( )	Appeals from Administrative Agencies
1520	( )	Tax Appeal
1530	( )	Appeal from Arbitration
1540	( )	Bureau of Employment Services
1550	( )	Workmen's compensation
1560	( )	Uniform Dependency
1570	( )	Will Contest
1690	( )	Other

I certify that to the best of my knowledge the within case is not related to any now pending or previously filed, except as noted above.

JOHN J. DUFFY
Firm Name (Print or type)
23823 Lorain Road
North Olmsted, Ohio 44070
Address
(216) 779-6636
Telephone

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

CASE NO. 90-1588

MARKET/MEDIA RESEARCH, INC.

Relator

-vs-

CUYAHOGA COURT OF COMMON PLEAS, et al.

Respondents.

MARKET/MEDIA'S FIRST REQUESTS FOR ADMISSIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO RESPONDENT JAMESTOWN

MARKET/MEDIA RESEARCH, INC., the Relator herein, pursuant to Civil Rule 26, 33, 34 and 36, hereby submits the following Requests for Admissions, Requests for Production of Documents and Interrogatories to be answered by Respondent JAMESTOWN, in writing and under oath, within 28 days after service hereof. Documents are to be produced at 11 a.m. Thursday, September 13, 1990, at Brothers Printing Co., 2000 Euclid Avenue, Cleveland, Ohio for the purpose of permitting copies to be made thereof. Alternatively, copies may be served with Respondent's Answers. These Interrogatories and Requests shall be deemed to be continuing so as to require supplementation by Defendant in the event that additional responsive information or documents become known subsequent to service of responses or production of documents.

DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions apply throughout these Requests and Interrogatories:

1) The terms "you", "your" and "yours" refer to the JAMESTOWN VILLAGE CONDOMINIUM OWNERS ASSOCIATION, to its Board of Managers and Board members, and to its attorneys, employees and other agents or representatives.

2) The terms "Board" and "Board of Managers" refer to the Board of Managers of THE JAMESTOWN VILLAGE CONDOMINIUM OWNERS ASSOCIATION, the Respondent herein and the terms "JAMESTOWN" and "ASSOCIATION" refer to the JAMESTOWN VILLAGE CONDOMINIUM OWNERS ASSOCIATION.

3) The term "JAMESTOWN I" refers to Cuyahoga County Common Pleas Case No. 143483; "JAMESTOWN II" refers to Cuyahoga County Common Pleas Case No. 149815; "JAMESTOWN III" refers to Cuyahoga County Common Pleas Case No. 154270; "JAMESTOWN IV" refers to Rocky River Municipal Court Case No. 89 CVG 1213, now Cuyahoga County Common Pleas Case No. 180862.

4) The term "document" refers to any and all writings or other means of recording or preserving information now or previously in your possession or in the possession of your attorneys or agents, including, but without limitation on the generality of the foregoing, any and all letters, minutes, correspondence, memoranda, reports, handwritten notes, photographs, sketches, drawings, designs, plans, specifications, records, journals, data books, taped recordings, time sheets, index cards or other indices, invoices, purchase orders, forms and computer printouts or information otherwise stored or preserved in computers.

5) When asked to "identify" a document or documents, state the type of document (e.g., letter, memorandum), its date, the name and address of its custodian and the place where it is currently located. In the event you choose to attach a copy of a requested document to your responses to these Interrogatories and Requests, you may abbreviate the identification of such document by stating only an exhibit number or other reference symbol and by providing requested identifying information that is not revealed by the document itself. If any document otherwise responsive to

any of these Interrogatories and Requests was formerly in your possession but has been lost, destroyed or otherwise separated from your possession or control, so state, and in addition, describe the circumstances or reasons for such loss, destruction or separation, and provide the name(s) and address(es) of any person(s) currently having custody or control or any other information concerning its present whereabouts.

6) If you claim that any document is subject to a claim of privilege, state the type of document, its date, the name and title of its author or originator, the name and title of each recipient, the reasons for or purpose of its preparation, the name and address of its custodian, and the reason(s) why you claim the document is subject to a claim of privilege.

7) When asked to identify a person, state his or her name, title (or position or classification), business address, residence address (or last known address), and telephone number; when identifying an expert, you may omit his or her residence address.

8) When asked to state the residence address of any person, provide the mailing address of the house, apartment, or other personal living quarters of such person (including therein the street, street number, apartment number, city, state and Zip Code, as applicable) as known to you or otherwise reflected in your records.

9) When asked to state the business address of any person, provide the name of the company or other business operated by or employing such person, together with the mailing address of the office of such company or other business where such person works or is employed.

10) Anything attached or affixed to a responsive document shall be deemed part of and produced with such responsive document, whether or not the attachment is itself independently responsive.

11) If there exist one or more copies of any responsive document, it shall be sufficient to produce only the original, unless such copy reveals or contains handwritten notes, attachments or other material or information not revealed by the original, in which case each such copy shall be produced.

12) If you object to an Interrogatory or Request on the belief that part, but not all, of the Interrogatory or Request is objectionable, so state, and provide the information and produce the documents to which you do not object.

13) The term "custodian" refers to each person who has possession or control of the document, tangible object, or copy thereof.

REQUESTS FOR ADMISSIONS

1) Please admit that the original accounting records for Unit 4779-201 requested herein are material to your claims in JAMESTOWN IV and III and were material to the issue of waiver in JAMESTOWN I and II.

2) Admit that your failure to produce these records violated the Order of the trial court in JAMESTOWN II "to provide evidence and affidavits, if any, as to whether the Board actually waived its option" to purchase Unit 4779-201.

3) Admit that in JAMESTOWN III you have submitted to the trial court three conflicting sworn statements concerning the account for Unit 4779-201, and further admit:

a) that all three sworn statements signed by JAMESTOWN officers were prepared by JAMESTOWN's attorney John J. Duffy.

b) That the jurats for two of the conflicting sworn statements were executed by Mr. Duffy and the third was executed by Mr. Duffy's secretary at his direction.

c) That all three sworn statements are factually false.

d) That you are concealing the material records despite the November 1, 1988, request for production served by MARKET/MEDIA in JAMESTOWN III and in violation of the June 6, 1989, order of the trial court that you produce them.

4) Admit that the Case Designation Form filed by you in JAMESTOWN III while JAMESTOWN II was pending in the trial court failed to disclose the existence of JAMESTOWN I and II and that such failure constituted a fraud on the court.

5) Admit that JAMESTOWN IV was filed during the pendency of JAMESTOWN III and involves the same subject matter as JAMESTOWN III and that the claim of unpaid garage rentals alleged in JAMESTOWN IV is identical to the claim for unpaid garage rentals alleged in JAMESTOWN III.

6) Admit that you were taking contradictory positions in JAMESTOWN III and JAMESTOWN IV with respect to the same material facts regarding the accounting records for Unit 4779-201, which you have concealed and refused to produce.

7) Admit that all of the documents requested in Request for Documents No. 6 herein are material to MARKET/MEDIA'S Counterclaims in JAMESTOWN III and:

a) That each of these documents was discovered by Robert Rhodes pursuant to an informal agreement between the parties in January and February, 1989.

b) That you subsequently refused to permit MARKET/ MEDIA to make copies of these documents.

c) That despite your repeated promises to MARKET/ MEDIA and your assurances to the trial court on September 12, 1989, that you would produce the documents without further delay or obstruction, you have failed and refused to do so.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1) Please identify and produce the original account records for Unit 4779-201 in the JAMESTOWN CONDO-MINIUM for the period January 1, 1982, through July, 1990.

2) Please identify and produce a sample of all accounting records which show how a unit owner is billed by the ASSOCIATION for common expenses, how the receipt of payment is recorded, how the funds received are handled by the ASSOCIATION and how a unit owner's individual account balance is maintained.

3) Please identify and produce all accounting records, invoices, billing statements or other documentation for legal services billed to or paid for by the ASSOCIATION from January 1, 1980 through July 31, 1990.

4) Please identify and produce all accounting records, invoices, billing statements or other documentation for payments made to members of the Board of Managers, directly or indirectly, or to their relatives, employees, agents or representatives or to any corporation, partnership or other entity owned, managed or controlled by them from January 1, 1980, through July 31, 1990.

5) Identify and produce the lists of names and addresses of unit owners and their percentage of interest in the condominium from January 1, 1980 through July 31, 1990.

6) Identify and produce each of the following documents which were discovered in January and February, 1989, but which you have refused to permit relator to copy:

a)The January 31, 1985 letter from CPA Cuciac which was enclosed with a February 11, 1985 letter from David Kaman to the Board of Managers.

b)All exhibits, enclosures and attachments to the November 19, 1984 letter from David Kaman to the Board of Managers.

c)The April 19, 1984 letter from Kaman to Pat Masterson re: Vicker.

d)The undated 1984 Vokoun letter re: "Rhodes Problem."

e)The September 25, 1985 Kaman letter to Board of Managers re: purchase of Unit 4779-201.

f)The June 1, 1984, Kaman letter to Board re: lawsuits.

g)The March 29, 1984, Vokoun letter to Elmer, Paulene and Ethel enclosing "To Whom It May Concern" letter re: Corsi.

h)The June 12, 1984 Vokoun letter on Northwoods stationery to "Dear Fellow Investors" re: Rhodes proxies.

i)The July 30, 1983, Vokoun letter to investors re: 1983 Board elections.

j)The October 2, 1986 Kaman letter to Board re: Vicker settlement terms with attachments.

k)The undated Kaman letter to Board with draft of cover letter to be sent to unit owners seeking authorization to purchase Unit 4779-201, with attachments, warning Board of libelous implications thereof.

l)The November 1, 1985 Kaman letter to Board re: Slys, self-dealing, etc., putting Board on notice of the baselessness of its legal claims refusing to file frivolous and harassing actions, suggesting that to do so could subject him and his firm to disciplinary action, and recommending the employment of other counsel for those matters.

INTERROGATORIES

INTERROGATORY NO. 1.

Identify each person responsible for maintaining the Unit owner Accounts from January 1, 1984 through August, 1990.

INTERROGATORY NO. 2.

Were each of the individuals identified in Interrogatory No. 1 bonded?

a)If so, state the amount of the bond and identify the bonding company.

b)If not, why not?

Dated the 10th day of August, 1990.

OWEN C. NEFF
SNYDER, NEFF AND CHAMBERLIN
720 Statler Office Tower
Cleveland, Ohio 44115
(216) 696-2630

IN THE SUPREME COURT OF OHIO

CASE NO. 90 - 1588

MARKET/MEDIA RESEARCH, INC.,

Relator,

v.

CUYAHOGA COUNTY COURT OF COMMON PLEAS, et al.,

Respondents.

MARKET/MEDIA'S SECOND REQUESTS FOR ADMISSIONS TO RESPONDENT JAMESTOWN

Relator Market/Media Research, Inc., pursuant to Civ. R. 26 and 36, hereby submits the following Requests for Admissions to Respondent Jamestown Village Condominium Association to be answered in writing and under oath no later than September 16, 1991.

CERTIFICATE OF SERVICE

A copy of these Requests for Admissions was served on John J. Duffy, attorney for Respondent Jamestown, by personal delivery to his office this 16th day of August, 1991.

/s/ Owen Calvin Neff
OWEN CALVIN NEFF

1. Please admit that the Declaration of Condominium Ownership for Jamestown Village Condominium is a contractual agreement among and between the unit owners and the Unit Owners Association.

2. Please admit that the copy of page 9 thereof, and specifically Paragraph 6 B. "Parking Facilities", attached hereto as Exhibit 1 is genuine.

3. Please admit that the copy of pages 16 and 17 thereof, and specifically Paragraph 14 A. - D., attached hereto as Exhibit 2 is genuine.

4. Please admit that the copy of page 26 thereof, and specifically Paragraph 19 A., attached hereto as Exhibit 3 is genuine.

5. Please admit that the copy of the Complaint filed in Jamestown I, Cuyahoga County Common Pleas Case No. 143483, and attached hereto as Exhibit 4 is genuine, and with respect to that case, please admit:

a. That the claim for declaratory judgment stated therein alleges a breach of Paragraph 19 A. of the Jamestown Declaration;

b. That the action was filed on January 8, 1988, and was duly assigned to the Honorable Michael J. Corrigan according to law;

c. That Jamestown I was dismissed without prejudice on May 6, 1988, after Jamestown's attorney John J. Duffy failed to appear for a scheduled status call.

6. Please admit that the copy of the Complaint filed in Jamestown II, Cuyahoga Common Pleas Case No. 149815, attached hereto as Exhibit 5, is genuine, and with respect to that case, please admit:

a. That the claim stated therein is identical to the claim stated in Jamestown I;

b. That upon refiling, the case was erroneously assigned to the Honorable Robert M. Lawther but was reassigned to Judge Corrigan on Motion by Market/Media pursuant to C.P.Sup.R. 4;

c. That on September 6, 1988, Judge Corrigan granted Market/Media's Motion for Summary Judgment;

d. That the Court of Appeals for Cuyahoga County, Eighth Judicial District, affirmed the judgment of the trial court on January 25, 1990, by Opinion attached hereto as Exhibit 5A.

7. Please admit that the copy of the Complaint filed in Jamestown III, Cuyahoga County Common Pleas Case No. 154270, attached hereto as Exhibit 6 is genuine, and with respect to that case, please admit the following:

a. That Jamestown III was filed on August 5, 1988, while Jamestown II was pending before Judge Corrigan;

b. That the claim stated therein alleges a breach of Paragraph 14 of the Jamestown Declaration;

c. That the Case Designation Form attached hereto as Exhibit 7 is genuine, that it was filed by Jamestown's attorney Duffy and that it falsely and fraudulently conceals the pendency of Jamestown II resulting in assignment as a separate case to the Honorable Timothy E. McMonagle;

d. That the Complaint seeks foreclosure on a lien filed by Jamestown on August 4, 1987, and refiled on September 27, 1987;

e. That the Complaint in Jamestown III thus shows on its face that the claim alleged therein had accrued prior to the filing of Jamestown I;

f. That under the controlling decision of the Ohio Supreme Court in Markota v. East Ohio Gas Co., 154 Ohio St. 546 (1951), Jamestown was required to state in Jamestown I all claims existing at the time of that filing alleging breaches of the Jamestown Declaration and waived the claim untimely presented in Jamestown III by having failed to do so.

8. Please admit that the copy of the Complaint filed in Jamestown IV, Rocky River Municipal Court Case No. 89 CVG 1213, attached hereto as Exhibit 8, is genuine and with respect to that case please admit the following:

a. That Jamestown IV was filed on August 22, 1989, while Jamestown III was pending before Judge McMonagle in the Court of Common Pleas;

b. That the claim for unpaid garage rentals was duplicative of the claim pending in Jamestown III and that the claim for restitution of the garage spaces was barred by the applicable statute of limitations, R. C. 1923.01;

c. That the claims stated in Jamestown IV allege breaches of Paragraph 6 of the Jamestown Declaration;

d. That the Complaint shows on its face that the claims alleged had accrued on March 1, 1987, prior to the filing of Jamestown I;

e. That under the controlling decision in Markota, 154 Ohio St. 546, Jamestown was required to state all claims alleging breaches of the Jamestown Declaration existing at the time of the filing of Jamestown I in that action and waived the claims ultimately presented in Jamestown IV by failing to do so;

f. That in response to Market/Media's Motion to Dismiss Jamestown IV as vexatious and duplicative of Jamestown III, the Honorable Maureen A. Gravens first converted the Motion to Dismiss to a Motion for Summary Judgment and then treated the Motion for Summary Judgment as a Motion to Transfer and Consolidate the case with Jamestown III as set forth in an Order attached hereto as Exhibit 9;

g. That in violation of C. P. Sup. R. 4 and the doctrine of the law of the case, the transferred case was given Cuyahoga Common Pleas Case No. 180862 and allowed to proceed as a separate case assigned to Judge Patricia A. Cleary;

h. That Jamestown IV was ultimately reassigned to the Honorable Terrence O'Donnell as a separate case.

9. Please admit that Common Pleas Superintendence Rule 4 is binding on the Court of Common Pleas and that the Court was not authorized by law to ignore its mandate and permit Jamestown III and Jamestown IV to proceed as separate cases when both alleged breaches of contractual obligations arising from the Jamestown Village Condominium Declaration all of which were alleged to have occurred prior to the filing of Jamestown I on January 8, 1988.

10. Please admit that a true and accurate copy of Judge Corrigan's Order directing Jamestown to produce "evidence..., if any, as to whether the Board actually waived its option" is attached hereto as Exhibit 10, and with respect to that Order admit:

a. That Jamestown violated the Order and R.C. 2921.12 by concealing from the Court the accounting records showing that Jamestown had billed Market/Media for maintenance fees for Unit 4779-201 and had accepted payments from Market/Media continuously from September, 1982, thus waiving the Notice provision upon which Jamestown sought its Declaratory Judgment in Jamestown I and II;

b. That the records concealed by Jamestown were material to issues of that action.

11. Please admit the same accounting records material to Jamestown I and II are material to the issues of Jamestown III, and with respect to those records, please admit:

a. That a true and accurate copy of Judge McMonagle's Order granting Market/Media's Motion to Compel Discovery in Jamestown III is attached hereto as Exhibit 11 and that this order required Jamestown to produce, inter alia, the accounting records for Unit 4779-201;

b. That Jamestown has failed and refused to produce the said accounting records in violation of that Order;

c. That when Market/Media filed a second Motion to Compel and a Motion for Default Judgment in consequence of Jamestown's failure to obey the first discovery order, Jamestown through its attorney Duffy agreed to provide all of the previously requested documents in return for the Court's denial of the two Motions, and then after the Motions were denied by the Court continued to withhold the documents in violation of its agreement, as set forth in Market/Media's Motion in Response to Plaintiff's Application for Summary Judgment and for Other Relief which is attached hereto as Exhibit 12;

d. That Jamestown's concealment of the accounting records material to its claims in Jamestown III violates R.C. 2921.12.

12. Please admit that Jamestown has submitted to the Court in Jamestown III three false and conflicting affidavits each attesting in violation of R.C. 2921.11 to what the accounting records being concealed would "show", and that the true and accurate copies of those affidavits are attached hereto as Exhibits 13, 14 and 15.

13. Please admit that Jamestown obtained an order by fraud in Jamestown III appointing a Receiver for Market/Media's property by submitting to the Court a proposed order fraudulently representing that it had been submitted to Market/Media's Counsel for approval as required by Local Rule 19 (A) when, in fact, it had not been and Market/Media was thereby denied its right to oppose the proposed order, all as set forth in Market/Media's Motion to Vacate that order, attached hereto as Exhibit 16.

14. Please admit that a true and accurate copy of the Order Appointing a Receiver is attached hereto as Exhibit 17.

15. Please admit that while this Action in Prohibition was pending before the Supreme Court of Ohio, Jamestown filed in the Court of Common Pleas on June 25, 1991, a Joint Motion, a true and accurate copy of which is attached hereto as Exhibit 18, seeking to evict Market/Media from its property, and further admit:

a. That a true and accurate copy of Market/Media's Response to Jamestown's Motion is attached hereto as Exhibit 19 and gives notice that the "Receiver" appointed by the Court never posted the required $25,000 bond and never qualified as receiver under the terms of the Court's Order of Appointment;

b. That notwithstanding this notice, Jamestown caused the filing of two sham documents, a Receiver's Reply, attached hereto as Exhibit 20, and a Plaintiff's Reply, attached hereto as Exhibit 21, both of which falsely and fraudulently represented to the Court that the required bond had been posted;

c. That Market/Media filed a Motion for Leave to Reply to the Receiver's document, a true and accurate copy of which is attached hereto as Exhibit 22, appending thereto a copy of the Court's Docket in Jamestown III as of 1 p.m. July 11, 1991,

showing that no bond had ever been posted by the receiver;

d. That on July 2, 1991, Jamestown filed a Motion for Sanctions alleging that Market/Media's Reply to the Joint Motion was "frivolous" and in violation of Civ.R. 11, a true and accurate copy of which is attached hereto as Exhibit 23;

e. That Market/Media was required to file a Motion to Strike Jamestown's Motion for Sanctions, a true and accurate copy of which is attached hereto as Exhibit 24.

16. Please admit that the pattern of conduct documented herein constitutes a continuing and vexatious abuse of the judicial process by Respondent Jamestown prohibited by Commercial Savings Bank v. Wyandot County Court of Common Pleas (1988), 35 Ohio St. 3d 192 and State, ex. rel. Stark v. Summit County Court of Common Pleas (1987), 31 Ohio St.3d 324.

17. Please admit that the pattern of conduct evidenced by Jamestown and Jamestown's attorney Duffy in these proceedings constitutes bad faith in the conduct of litigation and fraudulent abuse of the judicial process sanctionable under the inherent powers of the courts as delineated in the recent decision of the United States Supreme Court in Chambers v. NASCO, Inc. (June 6, 1991), --- U.S. ---, __ S.Ct. __, 59 USLW 4595.

Dated this 15th day of August, 1991.

/s/ Owen Calvin Neff
OWEN CALVIN NEFF
SNYDER, NEFF & CHAMBERLIN
1648 Hanna Building
1422 Euclid Avenue
Cleveland, Ohio 44115-2001
(216) 696-2630

ATTORNEY FOR RELATOR
MARKET/MEDIA RESEARCH, INC.
(Exhibits omitted in printing)

IN THE SUPREME COURT OF OHIO

CASE NO. 90 - 1588

MARKET/MEDIA RESEARCH, INC.,
Relator,
v.
CUYAHOGA COUNTY COURT OF COMMON PLEAS, et al.,
Respondents.

RELATOR'S MOTION FOR REHEARING EN BANC

Relator Market/Media Research, Inc., by and through Counsel, moves the Court for rehearing En Banc for the reason that the Order dismissing this action, a copy of which is attached as Exhibit A, shows that the Court mistakenly believed that Relator has filed a Suggestion of Mootness herein. The Order also recites other matters outside the pleadings which were considered, and Relator alternatively moves for rehearing on grounds that the Court's failure to give the required notice if it converted the motions to dismiss to motions for summary judgment and to permit Relator to offer its evidence; the Court's failure to deem admitted the facts set forth in Relator's proper Requests for Admissions to Respondent Jamestown after Jamestown failed to make any Response within the time permitted by Rule; and the Court's failure either to follow or else overrule the existing substantive law under which Relator is plainly entitled to the Writ of Prohibition sought herein, all deny Relator Due Process and the Equal Protection of the Laws in violation of the Fourteenth Amendment of the Constitution of the United States and the Constitution of Ohio. A Brief in Support of this Motion is attached hereto and incorporated herein by reference.

Respectfully submitted,
/s/ Owen Calvin Neff
OWEN CALVIN NEFF (0034210)
ATTORNEY FOR RELATOR
MARKET/MEDIA RESEARCH, INC.

BRIEF

I. THIS COURT'S ORDER DATED OCTOBER 23, 1991, SUSTAINING RESPONDENTS' MOTION TO DISMISS SHOWS ON ITS FACE THAT IT WAS BASED ON THE MISTAKEN BELIEF THAT RELATOR HAD FILED A SUGGESTION OF MOOTNESS.

The Court's Order (Exhibit A) states:

...Upon consideration of...relator's...suggestion of mootness....

The record clearly shows, however, that Relator did not file any suggestion of mootness. Such a document was filed by Respondent Jamestown, but it was filed in deliberate violation of the Stipulation for Dismissal and Judgment Entry and in apparent contempt of the Order of Judge O'Donnell in Jamestown IV. Rhodes' Affidavit, paragraphs 7-8 and Exhibit 5 thereto. In re Morrell, 174 Ohio St. 427, 428 (1963).

The suggestion of mootness filed by Jamestown admits, in the handwriting of its attorney John J. Duffy, that the claim in Jamestown IV was duplicative of the earlier claim filed in Jamestown III and specifically provides that it is without prejudice to Market/Media in this Action in Prohibition. Jamestown suggests that since one of the frivolous, duplicative and vexatious actions Relator asks this Court to prohibit has been disposed of (by a Court which Relator contends was absolutely without jurisdiction to act), it should be allowed to continue to maintain the remaining frivolous and vexatious action still pending.

It makes this suggestion notwithstanding that the remaining case, Jamestown III, is clearly barred in limine by the doctrine of res judicata by virtue of the final judgment in Jamestown II, Migra v. Warren City School Dist. Bd. of Edn., 465 U.S. 75, 85-87 (1983); Stromberg v. Bd. of Edn., 64 Ohio St. 2d 98, 100 (1980); Johnson's Island, Inc. v. Bd. of Township Trustees, 69

Ohio St.2d 241, 244 (1982); Cockley v. Bruckner, 54 Ohio St. 214 (1896) para. 2 and 4 of the Syllabus; Markota v. East Ohio Gas Co., 154 Ohio St. 546, 547-551 and para. 2 and 3 of the Syllabus; and by the clean hands doctrine, Goldberger v. Bexley Properties, 5 Ohio St.3d 82; Kinner v. Lake Shore and Michigan Southern Ry. Co., 69 Ohio St. 339 (1904); Keystone Co. v. Excavator Co., 290 U.S. 240, 246-247 (1933).

Since the Court was obviously misled by Jamestown's filing of a suggestion of mootness, the Court should grant Relator's Motion for Rehearing En Banc and rule on Relator's outstanding motions to deem matters admitted and to compel Jamestown to produce the material evidence of bad faith and improper motives in bringing these actions against Market/Media. The documents exist, Relator has properly requested their production and Jamestown has improperly concealed them from this Court and from the courts below.

II.IF THE COURT DISMISSED RELATOR'S ACTION ON ANY BASIS OTHER THAN THE MISTAKEN BELIEF THAT RELATOR HAD FILED A SUGGESTION OF MOOTNESS, RELATOR HAS BEEN DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAWS OF THIS STATE IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The Respondents filed motions to dismiss pursuant to Civ.R. 12(B). In O'Brien v. University Community Tenants Union, Inc., 42 Ohio St.2d 242 (1975), this Court held:

> In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted (Civ.R. 12(B)(6)), it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. (Conley v. Gibson, 355 U.S. 41, followed.)

When matters other than the complaint are considered, the motion must be converted into a motion for summary judgment as prescribed by the Rules.

A."WHEN A MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED PRESENTS MATTERS OUTSIDE THE PLEADING AND SUCH MATTERS ARE NOT EXCLUDED BY THE COURT, THE MOTION SHALL BE TREATED AS A MOTION FOR SUMMARY JUDGMENT AND DISPOSED OF AS PROVIDED IN RULE 56. PROVIDED HOWEVER, THAT THE COURT SHALL CONSIDER ONLY SUCH MATTERS OUTSIDE THE PLEADINGS AS ARE SPECIFICALLY ENUMERATED IN RULE 56. ALL PARTIES SHALL BE GIVEN REASONABLE OPPORTUNITY TO PRESENT ALL MATERIALS MADE PERTINENT TO SUCH A MOTION BY RULE 56." Civ.R. 12(B).

This Court's Order of October 23 specifically enumerates "matters outside the pleading" which the Court considered in making its ruling. The record shows that no notice was ever given that the Court intended to convert the motions to dismiss into motions for summary judgment and that Relator was never given any opportunity to present "materials made pertinent to such a motion by Rule 56." Indeed, the record shows that the Court never ruled on Relator's Motion filed on October 9, 1990, to enlarge time for Relator to respond to the motions to dismiss until 15 days after Respondent Jamestown complies with Relator's discovery requests.

Among the documents being sought are letters from Jamestown's former counsel to the Board advising them of the legal groundlessness of their claims, refusing to file them and suggesting that to do so could subject him to disciplinary action. Rhodes Affidavit, para. 14. These and other documents sought would supply clear evidence that Jamestown brought its actions against Market/Media in bad faith and out of malice and spite toward Relator's president Rhodes. Id.

B.RELATOR SERVED PROPER REQUESTS FOR ADMISSIONS UPON RESPONDENT JAMESTOWN. JAMESTOWN FAILED TO RESPOND WITHIN THE TIME PRESCRIBED BY RULE AND SPECIFIED IN THE REQUESTS. BOTH THE UNAMBIGUOUS LANGUAGE OF

CIV. R. 36 AND THE HOLDING OF THIS COURT IN CLEVELAND TRUST CO. V. WILLIS, 20 OHIO ST. 3d 66 (1985), PROVIDE THAT SUCH FAILURE TO RESPOND RESULTS IN THE MATTERS BEING DEEMED ADMITTED.

The record shows that Relator served its First Requests for Admissions on Respondent Jamestown with its Complaint on August 10, 1990, which Jamestown ignored. Relator filed a Motion to Compel and to Deem Admitted which this Court has never ruled on. On August 16, 1991, Relator served its Second Requests for Admissions on Jamestown which Jamestown again ignored. Relator filed a second Motion to Deem Matters Admitted on or about September 20, 1991, and Jamestown attempted to serve out-of-rule responses on September 26, 1991.

In Cleveland Trust Co. v. Willis, 20 Ohio St. 3d 66 (1985), this Court held:

> Per curiam. The issue raised by this appeal is whether the trial court correctly ruled that the signatory status of the parties was conclusively established by Cleveland Trust's requests for admissions. We hold that the trial court was correct in that ruling.
>
> Civ. R. 36 requires that when requests for admissions are filed by a party, the opposing party must timely respond either by objection or answer. Failure to respond at all to the requests will result in the requests becoming admissions. Under compelling circumstances, the court may allow untimely replies to avoid the admissions.
>
> In the instant case, Charles did not respond to the requests for admissions until the date of trial, forty-two days after service. The requests designated a period of twenty-eight days within which Charles was to respond. When Charles failed to answer the requests, the admissions became facts of record which the court must recognize.
>
> A request for admission can be used to establish a fact, even if it goes to the heart of the case. This is in accord with the purpose of the request to admit -- to resolve potentially disputed issues and thus to expedite the trial. See St. Paul Fire & Marine Ins. Co. v. Battle (1975), 44 Ohio App.2d 261, 269.

> Any matter admitted under Civ. R. 36 is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Civ.R. 36(B). (Emphasis supplied).

Jamestown has thus admitted that its actions are vexatious and an abuse of the judicial process (Second Admissions, No. 16) and that bad faith sanctions as authorized by Chambers v. NASCO, Inc., 111 S.Ct. 2123 (1991) are appropriate. Id., No. 17.

C.THIS COURT'S FAILURE EITHER TO FOLLOW OR ELSE OVERRULE THE EXISTING LAW UNDER WHICH RELATOR IS CLEARLY ENTITLED TO THE WRIT SOUGHT HEREIN DENIES RELATOR DUE PROCESS AND EQUAL PROTECTION OF THE LAWS.

In Leis v. Flynt, 439 U.S. 438, 441, 99 S.Ct. 698, 700-701 (1979), the Court held:

> As this Court has observed on numerous occasions, the Constitution does not create property interests. Rather, it extends various procedural safeguards to certain interests "that stem from an independent source such as state law."
>
> ***
>
> A claim of entitlement under state law, to be enforceable, must be derived from statute or legal rule or through a mutually explicit understanding. Id. at 442.

We do not dispute that this Court may overrule its own precedents at any time. We do, however, respectfully submit that it may not make either procedural or substantive rules of law and then exclude a single litigant, this Relator, from the rights and protections afforded by those rules to all without violating the Due Process and Equal Protection clauses of the Fourteenth Amendment.

It is well settled that the action of a state court "granting relief to one man and denying it to another under like circumstances and in the same territorial jurisdiction" is a denial of the equal protection of the laws. Truax v. Corrigan, 257 U.S. 312,

334, 42 S.Ct. 124, 130 (1921); Sexton v. Barry, 233 F.2d 220, 224 (6th Cir. 1956) cert. denied, 352 U.S. 870, 77 S.Ct. 94. For the Fourteenth Amendment intended

> "that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights...that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts...." (emphasis by the Court) Truax, 257 U.S. at 334 citing Barbier v. Connolly, 113 U.S. 27, 31.

Nor may a court abrogate or abridge its rules of procedure outside the regular rule-making process. Business Guides, Inc. v. Chromatic Communications Enterprises, Inc., -- U.S. --, 111 S.Ct. 922, 928 and 932 (citing Pavelic & LeFlore v. Marvel Entertainment Group, 493 U.S. ---, 110 S.Ct. at 460 (1989).

CONCLUSION

For all the foregoing reasons, the Court should grant this Motion for Rehearing En Banc, deem admitted the matters for which admissions were requested which Jamestown ignored and grant the Writ of Prohibition requested herein.

In the alternative, Relator requests the appointment of a special master commissioner as authorized by SCtR VIII, Sect. 13. Since Relator alleges conduct that involves serious violations of the Disciplinary Rules, Relator respectfully requests that the Court consider the appointment of its Disciplinary Counsel as the special master commissioner.

Respectfully submitted,

/s/ Owen Calvin Neff
OWEN CALVIN NEFF (0034210)
SNYDER, NEFF & CHAMBERLIN
1648 Hanna Building
1422 Euclid Avenue
Cleveland, Ohio 44115-2001
(216) 696-2630
ATTORNEY FOR RELATOR
MARKET/MEDIA RESEARCH, INC.

(Service omitted in printing)

EXHIBIT A
The Supreme Court of Ohio

Case No. 90-1588

1991 TERM

To wit: October 23, 1991

Market/Media Research, Inc.,
Relator,
v.
Cuyahoga County Court of Common Pleas et al.,
Respondents.

IN PROHIBITION
E N T R Y

This cause originated in this Court on the filing of a complaint for a writ of prohibition. Upon consideration of respondents' motions to dismiss, relator's motions to reconsider protective order, to deem matters admitted, suggestion of mootness, and to compel discovery,

IT IS ORDERED by the Court that said motions to dismiss be, and the same are hereby, sustained.

IT IS FURTHER ORDERED by the Court that this cause be, and the same is hereby, dismissed.

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

IN THE SUPREME COURT OF OHIO

CASE NO. 90 - 1588

MARKET/MEDIA RESEARCH, INC.,
Relator,

v.

CUYAHOGA COUNTY COURT OF COMMON PLEAS, et al.,
Respondents.

AFFIDAVIT OF ROBERT E. L. RHODES

Robert E. L. Rhodes, III, being first duly sworn according to law, deposes and states:

1. I am of legal age and was at all times pertinent the sole officer, director and shareholder of Relator Market/Media Research, Inc.

2. I have personal knowledge of the matters related herein.

3. Attached hereto as Exhibit 1 is page 2 of a document entitled "Plaintiff's Brief on Issue of Notice" signed by John J. Duffy, attorney for Jamestown Village Condominium Owners Association in this Court and in each of the cases which are the subject of this Original Action in Prohibition. The Brief was filed in Jamestown I, Cuyahoga Common Pleas Case No. 143483. Jamestown, by and through Mr. Duffy represented to that court:

"The subject property is a condominium unit....The operative element for each condominium development is its declaration....

The by-laws and declaration represent agreements among the unit owners themselves and between the unit owners and the association, and they are essentially contractual. State ex rel. Ourd v. Backhaus, 50 O App 2d 79, 10 O Ops 3d 101, 381 NE 2d 646 (1977)."

4. Attached hereto as Exhibit 2 is p. 26 of the Jamestown Declaration. Paragraph 19 A. thereof requires that the Board of Managers be given notice of any unit owner's intent to sell or lease his unit. The cause of action asserted by Jamestown in Jamestown I and Jamestown II, Cuyahoga Common Pleas Case No. 149815, was an alleged breach of Paragraph 19 A. of the Declaration.

5. Attached hereto as Exhibit 3 are pp. 16-17 of the Jamestown Declaration and pp. 15, 18-19 of the Jamestown By-Laws. The cause of action asserted in Jamestown III, Cuyahoga Common Pleas Case No. 154270, is an alleged breach of Paragraph 14 of the Declaration and Article V of the By-Laws. The cause of action is alleged to have accrued prior to the filing of Jamestown I.

6. Attached hereto as Exhibit 4 is p. 9 of the Jamestown Declaration. The cause of action asserted in Jamestown IV, Rocky River Municipal Court Case No. 89-CVG-1213, is an alleged breach of Paragraph 6 B. of the Declaration and was alleged to have accrued prior to the filing of Jamestown I. This action was found by the Rocky River Court to be duplicative of Jamestown III and was ordered transferred at Jamestown's expense to Common Pleas Court to be consolidated with Jamestown III. In violation of the order, the case was given Cuyahoga Common Pleas Case No. 180862 and assigned to yet another judge as a separate case.

7. Attached hereto as Exhibit 5 is the Stipulation for Dismissal and Judgment Entry filed in Jamestown IV on October 12, 1990. The stipulation is in the hand of Mr. Duffy except for the cursive script portion added and initialed by Judge O'Donnell. The stipulation acknowledged that "a claim for the alleged amount due is pending in Case No. 154270, all without prejudice to Defendant Market/Media Research, Inc. in Case Numbers 149815,

154270 and the Writ pending in Ohio Supreme Court Case No. 90-1588 entitled Market/Media Research, Inc. v. Common Pleas Court of Cuyahoga County." Without this provision I would not have approved or signed the stipulated entry.

8. The Order of the Supreme Court of Ohio dated October 23, 1991 (Exhibit A) is mistaken when it refers to "relator's...suggestion of mootness." Relator (Market/Media) did not file any suggestion of mootness. Rather, that document was filed by Mr. Duffy on behalf of Respondent Jamestown in deliberate violation of the Stipulated Order in Jamestown IV and in apparent contempt of that court. Its filing was a willful act by Mr. Duffy and Jamestown to mislead this Court just as they have repeatedly misled the courts below.

9. Attached hereto as Exhibit 6 is a copy of the Complaint filed in Jamestown I on January 8, 1988. That case was dismissed without prejudice on May 6, 1988, after Mr. Duffy failed to appear for a scheduled status call. It was refiled as a new case on May 16, 1988. Summary judgment was entered in favor of Market/Media and against Jamestown on September 6, 1988. Jamestown appealed and the Court of Appeals affirmed the summary judgment on January 25, 1990. No further appeal was taken.

10. Attached hereto as Exhibit 7 is a copy of the Complaint filed in Jamestown III on August 5, 1988, while Jamestown II was pending in the trial court.

11. Attached hereto as Exhibit 8 is a copy of the Case Designation Form required by local rule to be filed with each new civil case. Jamestown III was filed while Jamestown II was pending before Judge Corrigan. The Case Designation Form falsely certifies that "to the best of my knowledge the within case is not related to any now pending or previously filed, except as noted above." Mr. Duffy was counsel of record for Jamestown in all three actions.

12. Attached hereto as Exhibit 9 is a copy of the Complaint filed in Jamestown IV on August 12, 1989, while Jamestown III asserting an identical claim was pending before the Honorable Timothy E. McMonagle.

13. Market/Media's First Discovery Requests attached to and served with the Complaint in this Action and Market/Media's Second Requests for Admission to Respondent Jamestown, attached to Relator's Motion to Deem Matters Admitted, are incorporated by reference. Each of the facts of which admission was requested is true to my personal knowledge except for two typographical errors in Requests 7 a. on p. 5 and 15 d. on p. 17. The Complaint in Jamestown III was filed on August 5, 1988, and the Motion for Sanctions was filed on July 17, 1991, as shown by the Court's file stamp on those documents. Affiant lacks personal knowledge of the facts set forth in Request 13; these facts are attested by the affidavits of Attorney David K. Speaker and his secretary which are attached as Exhibit 10 hereto.

14. I have personally read each of the documents sought in the Requests for Production of Documents filed herein. These documents contain clear evidence that the actions filed by Jamestown against Market/Media were motivated by the malice and spite of certain Jamestown Board members against me personally and against others and were brought notwithstanding that the Board had been advised by its previous attorney, who refused to file them, that they were legally baseless and that to file and maintain them could subject him to disciplinary action.

/s/ Robert E. L. Rhodes, III
Robert E. L. Rhodes, III

Sworn and subscribed in my presence this 4th day of November, 1991.

/s/ Owen C. Neff
Notary Public

EXHIBIT 1

(Plaintiff's Brief on Issue of Notice, page 2)

LAW AND ARGUMENT

I. WHETHER WRITTEN NOTICE OF THE INTENT TO SELL IS REQUIRED BEFORE THE RIGHT OF FIRST REFUSAL IS ACTIVATED.

Yes, written notice of the intention to sell is required before the right of first refusal is activated. The Declaration which establishes this right specifically calls for written notice and the Declaration must be strictly construed.

The subject property is a condominium unit. Condominium units are controlled by the Ohio Condominium Property Act, Revised Code Sections 5311.01 et seq. The operative element for each condominium development is its declaration. The declaration submits property to the Act and contains among other things, a legal description of the property and a general description of the buildings; the restrictions, if any, upon the use of the units; and a statement that each unit owner shall be a member of a unit owners association established for the administration of the condominium property. See Revised Code §5311.05. The association is governed by its by-laws which are filed along with the condominium declaration. Revised Code §5311.08.

The by-laws and declaration represent agreements among the unit owners themselves and between the unit owners and the association, and they are essentially contractual. State ex rel. Ourd v. Backhaus, 50 O App 2d 79, 10 O Ops 3d 101, 381 NE 2d 646 (1977). All unit owners are subject to and must comply with all covenants, conditions and restrictions set forth in their deed to the property, the declaration and association by-laws and administrative rules, and violations thereof are grounds for actions for damages or injunctive relief or both. Revised Code §5311.19.

The Declaration of Condominium Ownership for Jamestown Village Condominium (Declaration) contains a right of first refusal in the Association to lease or purchase on the same terms and conditions any unit that is to be leased or purchased. Article 19 of the Declaration states in pertinent part:

Any owner...who wishes to sell or lease his unit ownership

EXHIBIT 2

19. Sale, Lease, Rental or other Disposition.

A. Sale or Lease. Any owner other than Declarant, or a mortgagee who purchases a unit at foreclosure sale or takes a deed in lieu of foreclosure, who wishes to sell or lease his unit ownership shall give to the Board of Managers no less than thirty (30) days prior written notice of the terms of any contemplated sale or lease, together with the name and address of the proposed purchaser or lessee. The members of the Board of Managers acting on behalf of consenting unit owners as hereinafter provided, shall at all times have the first right and option to purchase or lease such unit ownership upon the same terms, which option shall be exercisable for a period of thirty (30) days following the date of receipt of such notice; provided, however, that if the proposed purchase or lease shall be for a consideration which the Board of Managers deems inconsistent with the bona fide fair market value of such unit ownership, the Board of Managers may elect to exercise such option in the manner, within the period, and on the terms set forth in Section B of this Item 19. If said option is not exercised by the Board of Managers within the aforesaid option period, the owner may, at the expiration of said period, contract to sell or lease such unit ownership to the proposed purchaser or lessee named in such notice upon the terms specified therein.

EXHIBIT 3

14. Assessments and Lien of Association.

A. General. Assessments for the maintenance, repair and insurance of the Common Areas and Facilities and liability insurance for the protection of the Family Unit Owners arising out of their ownership in the Common Areas and Facilities, together with the payment of the common expenses, shall be made in the manner provided herein, and in the manner provided by the By-Laws. Included in said assessments shall be costs imposed upon the Condominium Property by virtue of certain easements and restrictions previously recorded. Reference is made to Section 21 of this Declaration for greater details of said easements and restrictions. In the event the Association shall decide to provide any machines, such washers, dryers and telephone, or if they

decide to charge for the use of any Common Facilities, the funds received shall be used to defray the assessments made.

B. Division of Common Profits and Common Expenses. The proportionate shares of the separate owners of the respective Family Units in the common profits and the common expenses of the operation of the Condominium Property is based upon the proportionate estimated fair value at inception that each of the Family Unit bears to the aggregate fair value of all of the Family Units. Such proportionate share of profits and expenses of each Family Unit owner shall be in accordance with the percentages set forth in Item 6, Section A, hereof.

C. Non-Use of Facilities. No owner of a Family Unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or by the abandonment of his Family Unit.

D. Lien of Association. The Association shall have a lien upon the estate or interest in any Family Unit of the owner thereof and its percentage of interest in the Common Areas and Facilities, for the payment of the portion of the common expenses chargeable against such Family Unit which remain unpaid for ten (10) days after the same have become due and payable from the time a certificate therefor, subscribed by the President of the Association, is filed with the Recorder of Cuyahoga County, Ohio, pursuant to authorization given by the Board of Managers of the Association. Upon filing such a lien, notification thereof shall be by regular mail to the Unit Owner and his mortgagee as shown on the books of the Association. Such certificate shall contain a description of the Family Unit, the name or names of the record owner or owners thereof and the amount of such unpaid portion of the common expenses. Such lien shall remain valid for a period of five years from the time of filing thereof, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of the Court in an action brought to discharge such lien as hereinafter provided. In addition, the owner of the Family Unit and any occupant thereof shall be personally liable for such expenses chargeable for the period of his ownership or

occupancy.

E. Priority of Association's Lien. The lien provided for in Section D of this Item 14 shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and lien of bona fide mortgages which have been theretofore filed for record, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association. In any such foreclosure action, the owner or owners of the Family Unit affected shall be required to pay a reasonable rental for such Family Unit during the pendency of

ARTICLE V
DETERMINATION AND PAYMENT OF ASSESSMENTS

Section 1. Obligation of Owners to Pay Assessments. It shall be the duty of every unit owner to pay his proportionate share of the expenses of administration, maintenance and repair of the Common Areas and Facilities and of the other expenses provided for herein. Such proportionate share shall be in the same ratio as his percentage of ownership in the Common Areas and Facilities as set forth in the Declaration. Payment thereof shall be in such amounts and at such times as may be determined by the Board of Managers of the Association, as hereinafter provided.

Section 10. Remedies for Failure to Pay Assessments. If an owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the members of the Board of Managers may bring suit for and on behalf of themselves and as representatives of all owners, to enforce collection thereof or to foreclose the lien therefor as provided in the Declaration. There shall be added to the amount due the costs of said suit, together with legal interest and reasonable attorneys' fees to be fixed by the Court. To the extent permitted by the Declaration, any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided, shall be a lien or charge against the unit ownership of the owner involved when payable, and may be foreclosed by an action brought in the name of the

Board of Managers as in the case of foreclosure of liens against real estate, as provided in the Declaration. As provided in the Declaration, the members of the Board of Managers, and their successors in office acting on behalf of the other unit owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Any encumbrancer may from time to time request in writing a written statement from the Board of Managers -18-setting forth the unpaid common expenses with respect to the unit covered by his encumbrance and unless the request shall be complied with within twenty (20) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to such unit and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid at the same rank as the lien of his encumbrance.

EXHIBIT 4

[6] B. Parking Facilities. As part of the Common Areas, there exists both garaged and outdoor parking facilities. The Managers shall determine the allocation of the garaged and outdoor parking spaces and the charge for rental of the spaces, if any. The Managers shall also allocate a number of spaces to be used for visitors.

(Immaterial matter omitted in printing)

EXHIBIT 5

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
NO. 180862

JAMESTOWN VILLAGE CONDOMINIUM ASSOCIATION
Plaintiff(s)
-vs-
MARKET/MEDIA RESEARCH, INC.
Defendant(s)

STIPULATION FOR DISMISSAL
AND JUDGMENT ENTRY

THE STATE OF OHIO)
) SS.
County of Cuyahoga)

We, the attorneys for the respective parties, do hereby stipulate Defendant to vacate garage spaces 24 & 25 by Midnight, November 1, 1990. Writ to issue on November 2, 1990 if Defendant has not so vacated.

The second cause of action is dismissed without prejudice on the understanding that a claim for the alleged amount due is pending in Case No. 154270, all without prejudice to Defendant Market/Media Research, Inc. in Cases Numbers 149815, 154270 and the Writ pending in Ohio Supreme Court Case No. 90-1588 entitled Market/Media Research, Inc. v. Common Pleas Court of Cuyahoga County, and that the Court may enter an order accordingly, notice by the Clerk being hereby waived. Court will treat any viol of this order as contempt. TOD

IT IS SO ORDERED
/s/ Terrence O'Donnell
Judge

/s/ John J. Duffy
Attorney for Plaintiff

/s/ Owen C. Neff
Attorney for Defendant

MARKET/MEDIA RESEARCH, INC.
By /s/ Robert E. L. Rhodes
President

EXHIBIT 6

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CASE NO. 143483

THE JAMESTOWN VILLAGE CONDOMINIUM
OWNERS ASSOCIATION
21851 Center Ridge Road
Rocky River, Ohio 44126

Plaintiff

vs.

STEPHEN C. KLAUSMAN
5 Buxton Drive
Columbia, South Carolina 29233

MARKET-MEDIA RESEARCH, INC.
4779 Columbia Road, No. 201
North Olmsted, Ohio 44070

Defendants

COMPLAINT: FOR A DECLARATORY JUDGMENT

1. This is an action for Declaratory Judgment pursuant to Chapter 2721, Ohio Revised Code and Sections 2721.02, 2721.03 and 2721.13 and under rule 57 of the Ohio Rules of Civil Procedure.

2. Plaintiff is a corporation Not for Profit organized under Chapter 1701 and §5311.08 Ohio Revised Code.

3. Defendant Stephen C. Klausman (Klausman) was formerly the owner in fee simple of a condominium unit known as 4779 Columbia Road, No. 201.

4. Defendant Market Media Research, Inc. (Market-Media), an Ohio corporation, is the current record owner of 201.

5. On or about October 8th, 1982, defendants Klausman, as Vendor, and Market-Media, as Vendee, entered in a Land Installment contract for the sale of 201. Said contract is recorded at Volume 16171, Page 461, Cuyahoga County Records. A copy of said Land Installment Contract is affixed as Exhibit A.

6. On or about September 1, 1982, pursuant to said Land Installment contract, Market-Media took possession of 201 and has remained in possession to the present.

7. At some time after September 1, 1982 and before April 11, 1986, plaintiff acquired actual knowledge of the Land Installment Contract and of Market-Media's possession of 201.

8. On or about September 11, 1987, pursuant to said contract, Klausman executed and delivered to Market-Media, a warranty deed to 201. Said deed is recorded at Volume 37 6080, Page 25, Cuyahoga County Records. A true copy is affixed as Exhibit 5.

9. The Declaration of Condominium Ownership for the Jamestown Village Condominium, Recorded at Volume 14478, Page 117, et seq. provides at Article 19, paragraph A, page 26: "Any owner...who wishes to sell or lease his unit ownership shall give the Board of Managers no less than thirty (30) days prior written notice of the terms of any contemplated sale or lease, together with the name and address of the proposed purchasee or lessee. The Members of the Board of Managers, acting on behalf of consenting unit owners, as hereafter provided, shall at all times have the first right and option to purchase or lease said unit." (Exhibit C)

10. Defendant Klausman has not, at any time, given the Board of Managers written notice of the terms of the contemplated sale.

11. The Board of Managers has not at any time waived its first right of refusal.

12. Plaintiff Association wishes to exercise its first right of refusal to purchase 201.

WHEREFORE, plaintiff asks the court to declare:

That defendant Klausman's transfer of Jamestown Village Condominium Unit 4779 Columbia Road, No. 201, by deed of September 11, 1987 without the release of plaintiff's first right of refusal was null and void.

That plaintiff has the right to purchase Jamestown Village Condominium Unit 4779 Columbia Road, No. 201 within 30 days after such written notice of the terms of sale as the Court may deem appropriate.

Plaintiff further prays for costs and such other equitable and supplemental relief as the Court may deem appropriate under the circumstances.

/s/ John J. Duffy
JOHN J. DUFFY
Attorney for Plaintiff
23821 Lorain Road
North Olmsted, Ohio 44070
(216) 779-6636

EXHIBIT 7

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CASE NO. 154270

JUDGE TIMOTHY E. McMONAGLE

JAMESTOWN VILLAGE CONDOMINIUM
OWNERS ASSOCIATION
4777 Columbia Road
North Olmsted, Ohio 44070

Plaintiff

vs.

MARKET-MEDIA RESEARCH, INC.
4779 Columbia Road, #201
North Olmsted, Ohio 44070
and
CLEVELAND FEDERAL SAVINGS AND LOAN
ASSOCIATION OF CUYAHOGA COUNTY
nka Dollar Bank
614 Euclid Avenue
Cleveland, Ohio 44114
and
STEVEN C. KLAUSMAN
5 Buxton Drive
Columbia, South Carolina 29223
and
FRANCIS E. GAUL
Cuyahoga County Treasurer
1219 Ontario Street
Cleveland, Ohio 44113

Defendants.

COMPLAINT FOR FORECLOSURE

1. Plaintiff is an existing corporation, not for profit, organized under the laws of the State of Ohio, and was formed in accordance with Chapter 5311 of the Ohio Revised Code to act as the Association of Unit Owners for the Jamestown village Condominium.
2. Pursuant to the authority of Section 5311.18 of the Ohio Revised Code, the plaintiff, through its President, filed a Certificate of Lien stating there was due and owing it from the defendant Steven C. Klausman, the sum of $801.96 as maintenance fees and assessments and $75.00 in attorney fees. The Certificate was recorded in Cuyahoga County Records on August 4, 1987 and re-recorded on September 28, 1987.
3. There is currently due the plaintiff, based upon the above lien, additional unpaid maintenance fees and assessments through August 1, 1988, a total of $3,032.08 from the defendants Steven C. Klausman and Market-Media Research, Inc.
4. The above lien is valid on the property owned by the defendant, Market-Media Research, Inc., which is described as follows:

Situated in the City of North Olmsted, County of Cuyahoga and State of Ohio and being Unit No. 4779-201 of the Jamestown Village Condominium, as shown by the Declaration and By-Laws recorded in Deed Book 14472, Page 117, and drawings recorded in Plat Book 28, 46-68 of Cuyahoga County Records, with amendments, if any.

5. The defendants, Dollar Bank, Steven C. Klausman and Francis E. Gaul, Cuyahoga County Treasurer may have an interest in the real property referred to above.
6. In accordance with the Jamestown Village Declaration and By-Laws, Article 5, Section 10 of the By-Laws recorded in Cuyahoga County Records Deed Book 14478, Page 117, Market-Media Research, Inc. has by covenant agreed to be responsible for the legal fees and court costs incurred in the within action. Said fees and costs total $800.00.

WHEREFORE, plaintiff prays that:

A) Defendants, Dollar Bank, Steven C. Klausman and Francis E. Gaul, Cuyahoga County Treasurer be required to answer and set forth their interest in the above described property, or be barred from exerting any claim.

B) That plaintiff's lien be found to be a good and valid lien upon said property;

C) All liens on said property be marshaled;

D) The real property owned by Market-Media Research, Inc. as described herein, be sold at Sheriff's sale according to law;

E) Plaintiff be paid the sum of $3,032.08 plus interest and costs from the proceeds of said sale;

F) Plaintiff recover its costs for the within action including costs of preparation of the preliminary judicial report in the amount of $312.00.

G) Plaintiff recover its attorney fees and court costs of the within action in the amount of $800.00

H) Plaintiff be granted any additional relief to which it may be entitled to at law or in equity including additional unpaid condominium maintenance fees and special assessments incurred subsequent to the filing of the within action.

/s/ John J. Duffy
JOHN J. DUFFY
Attorney for Plaintiff
23823 Lorain Road
North Olmsted, Ohio 44070
(216) 779-6636CASE

EXHIBIT 8

DESIGNATION FORM
TO INDICATE THE CATEGORY OF THE CAUSE

NO. 154270
JUDGE TIMOTHY E. McMONAGLE

JAMESTOWN VILLAGE CONDOMINIUM
OWNERS ASSOCIATION

-vs-

MARKET-MEDIA RESEARCH, INC., et al.

Pending or Closed Related Case(s). If any, list case number and Judge.

Civil Categories: (Place (X) in one category only.)

1310	( )	Tort - Motor Vehicle Accident
1320	( )	Tort - vs. Property Owner
1330	( )	Tort - Product Liability
1340	( )	Tort - F.E.L.A.
1350	( )	Tort - Miscellaneous
1360	( )	Libel and Slander
1370	( )	Contract
1380	( )	Promissory Note
1390	( )	Cognovit
1400	( )	Equity
1410	( )	Mandamus
1420	( )	Habeas Corpus
1430	( )	Quo Warranto
1440	( )	Eminent Domain
1450	( )	Ejection, Recovery of Real Property
1460	(X)	Foreclosure Marshalling of Lien
1470	( )	Quiet Title

1480	( )	Partition
1490	( )	Foreign Attachment
1500	( )	Replevin
1510	( )	Appeals from Administrative Agencies
1520	( )	Tax Appeal
1530	( )	Appeal from Arbitration
1540	( )	Bureau of Employment Services
1550	( )	Workmen's compensation
1560	( )	Uniform Dependency
1570	( )	Will Contest
1690	( )	Other

I certify that to the best of my knowledge the within case is not related to any now pending or previously filed, except as noted above.

JOHN J. DUFFY
Firm Name (Print or type)
23823 Lorain Road
North Olmsted, Ohio 44070
Address
(216) 779-6636
Telephone

EXHIBIT 9

IN THE ROCKY RIVER MUNICIPAL COURT
CASE NO. 89CVG 1213
JUDGE MAUREEN A. GRAVENS

STATE OF OHIO)
CUYAHOGA COUNTY) SS:
CITY OF NORTH OLMSTED)

JAMESTOWN VILLAGE CONDOMINIUM
OWNERS ASSOCIATION
4777 Columbia Road
North Olmsted, Ohio 44070
Plaintiff

vs.

MARKET/MEDIA RESEARCH, INC.
Robert Rhodes, President
4779 Columbia Rd., No. 201
North Olmsted, Ohio 44070
Defendant

COMPLAINT

First Cause of Action.

Plaintiff for its first cause of action says that the said defendant has, ever since the 1st day of March, 1987 unlawfully and forcibly detained, and does still unlawfully and forcibly detain from plaintiff possession of the following described premises, situated in the City of North Olmsted, County of Cuyahoga and known as Garage Spaces Nos. 24 and 25, located at 4777 Columbia Road, together with the Lot of Land on which said Garage Spaces are situated. On the 15th day of August, 1989 plaintiff duly served upon the said defendant, as required by law, notice in writing to leave said premises. Plaintiff asks process and restitution.

Second Cause of Action.

Plaintiff for its second cause of action says that defendant owes plaintiff rent of $40.00 per month for the months of March,

1987 through August, 1989; $1,200 on the date of filing this complaint and $40.00 per month until defendant shall vacate.

WHEREFORE, plaintiff demands judgment against defendant in the amount of $1,200.00 with interest from the 1st day of March, 1987 and $40.00 per month until the defendant shall have vacated.

/s/ John J. Duffy
JOHN J. DUFFY, Attorney for Plaintiff
23823 Lorain Rd. - #210
North Olmsted, Ohio 44070
(216) 779-6636

PLAINTIFF'S AFFIDAVIT

STATE OF OHIO)
CUYAHOGA COUNTY) SS:
CITY OF NORTH OLMSTED)

JOHN J. DUFFY, being first duly sworn, on oath, states that he is the attorney for plaintiff in the above entitled causes; that said causes are suits for the recover of possession of real property and for money, and that the facts set forth in the foregoing petition are true as he verily believes.

/s/ John J. Duffy
JOHN J. DUFFY

Subscribed and sworn before me this 31st day of August, 1989.

/s/ Georgianne Wolfe
Notary Public

(stamp) GEORGIANNE WOLFE
Notary Public, State of Ohio
Recorded in Cuyahoga County
My Comm. Expires 05-20-90

EXHIBIT 10

COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CASE NO. 154270

JUDGE TIMOTHY E. McMONAGLE

JAMESTOWN VILLAGE CONDOMINIUM
OWNERS ASSOCIATION

Plaintiff

v.

MARKET/MEDIA RESEARCH, INC., et al.

Defendants

AFFIDAVIT OF DAVID K. SPEAKER

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

NOW COMES David K. Speaker who after being duly sworn deposes and says:

1. I am Attorney of Record for Defendant Market/Media Research, Inc., in the matter before this Court and have personal knowledge of the matters related herein.

2. The docket shows that on March 5, 1990, the Clerk of this Court received for filing an Order Appointing Receiver signed by the Honorable Timothy E. McMonagle, Judge.

3. The Order was approved by John J. Duffy, attorney for Plaintiff and a notation in the space for my signature indicating that the proposed order was submitted to me on February 14, 1990.

4. The proposed order was in fact never submitted to me.

5. Contrary to the statement in the first full paragraph on page 2, I have never made any stipulation regarding the fair market value of the property.

FURTHER affiant sayeth naught.

/s/ David K. Speaker
David K. Speaker

Sworn and subscribed in my presence this 17 day of April, 1990.

/s/ Paul C. Donohue
NOTARY PUBLIC

(stamp) PAUL C. DONOHUE, Attorney
NOTARY PUBLIC-STATE OF OHIO
My commission has no expiration date
Section 147.03 R.C.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CASE NO. 154270

JUDGE TIMOTHY E. McMONAGLE

JAMESTOWN VILLAGE CONDOMINIUM
OWNERS ASSOCIATION
Plaintiff

v.

MARKET/MEDIA RESEARCH, INC., et al.
Defendants

AFFIDAVIT OF MARY ELIZABETH MILLER

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Mary Elizabeth Miller, the undersigned, being first duly sworn, deposes and states:

1. I am of legal age and have personal knowledge of the matters stated herein.

2. I am the only woman in the office of David K. Speaker and was at work on February 14, 1990.

3. I have no recollection of receiving an envelope from the office of John J. Duffy and Associates or anyone else on that date.

4. Had such an envelope been delivered in Mr. Speaker's absence, I would normally have signed a receipt for it and delivered it to Mr. Speaker, unopened, when he returned.

FURTHER affiant sayeth naught.

/s/ Mary Elizabeth Miller
Mary Elizabeth Miller

Sworn and subscribed in my presence this 18th day of May, 1990.

/s/ David K. Speaker
Notary Public

(stamp)
DAVID K. SPEAKER, Attorney
NOTARY PUBLIC-STATE OF OHIO
My commission has no expiration date
Section 147.03 R.C.

IN THE SUPREME COURT OF OHIO

CASE NO. 90-1588

MARKET/MEDIA RESEARCH, INC.

Relator,

-vs-

CUYAHOGA COUNTY COURT OF COMMON PLEAS, et al.

Respondents.

MOTION TO STAY PROCEEDINGS

The Relator, by and through Counsel, moves the Court for an Order staying the proceedings, in whole or in part, in respect to each of the following actions now pending in the Court of Common Pleas in and for Cuyahoga County, Ohio.

1)JAMESTOWN VILLAGE CONDOMINIUM OWNERS ASSOCIATION v. MARKET/MEDIA RESEARCH, INC. Case No. 154 270, now pending before the Honorable TIMOTHY E. McMONAGLE, and

2)JAMESTOWN VILLAGE CONDOMINIUM OWNERS ASSOCIATION v. MARKET/MEDIA RESEARCH, INC., Case No. 180 862 now pending before the Honorable TERRENCE O'DONNELL.

This motion is supported by the memorandum attached hereto, which is incorporated herein by reference.

Respectfully submitted,

/s/ Owen Calvin Neff

(Signature and Service omitted in printing)

MEMORANDUM

The RELATOR brought an action in the original jurisdiction of this Court on August 21, 1990, wherein it sought prohibition against the Court of Common Pleas in and for Cuyahoga County, Ohio. The gist of the action was to prevent the further prosecution of two (2) actions now pending, namely JAMESTOWN VILLAGE CONDOMINIUM OWNERS ASSOCIATION v. MARKET/MEDIA RESEARCH, INC. No. 154 270 and JAMESTOWN VILLAGE CONDOMINIUM OWNERS ASSOCIATION v. MARKET/MEDIA RESEARCH, INC. No. 180 862. These, together with a third action, were alleged to be duplicative and vexatious in nature.

Both Respondents were duly served and each filed a motion to dismiss the application for the writ. Counsel, and/or the Court in which case number 180 862 was pending, the same having been assigned to the Honorable Terrence O'Donnell, notwithstanding the pendency of this action, arranged a case management conference on September 27, 1990. No official notice of this conference was sent to the Relator. Counsel for this Relator then sent a letter to the Honorable Terrence O'Donnell, a copy of which is attached hereto and marked Exhibit "A". This letter was preceded by oral notice to the Bailiff of the Court. Apparently Counsel for JAMESTOWN never informed the Court that a Writ was pending.

On September 28, 1990, after business hours, a call was received from Counsel for JAMESTOWN notifying us that a "hearing" would be held at 8:30 a.m. on October 4, 1990. This was confirmed by letter, received in the office of the undersigned after 9:00 a.m. on October 4, 1990. No notice from the Court was ever received regarding this "hearing."

At approximately 9:15 a.m. on October 4, 1990, Mr. Rhodes, on behalf of MARKET/MEDIA, Counsel being absent from the City, called the Court to remind it that a writ was pending and was informed: "You have someone here by 10:00 a.m. or I will enter a Default."

Thereafter, Counsel received a call to the effect that the matter had been set for Default on October 11, 1990 at 8:30 a.m. for failure of Counsel to attend a "pre-trial". It is this hearing, against which, the request for a stay is directed.

The logic of the matter is this: if the filing of the writ itself does not stay all further proceedings until ruled on, the Court could enter extensive orders during the interim between filing and the granting of the writ. This would completely destroy the writ as a protective device, for the writ operates prospectively only. See 63 American Jurisprudence 2nd 229:

Sec. 5. Office and purpose of writ

"The remedy by prohibition is primarily preventive and restraining, not corrective...."

Thus, if the Court has acted, the only remedy is by Appeal and the efficacy, force or effectiveness of the writ is lost and destroyed.

It is clear to Counsel that Judge O'Donnell fully intends to enter a default. Translated to the posture of the instant matter, unless a stay is granted, a default will be entered and the Relator will be forced to Appeal in a matter where the inferior Court had no jurisdiction. If the Court were to permit this practice, a device would be invented whereby the application for a Writ would be defeated in every instance.

The situation is identical to an Affidavit of prejudice or a motion to recuse. If the filing of the Affidavit alone does not suspend the power of the Court against whom it is filed, to act, all manner of prejudicial orders could be entered before the matter is heard. The filing of the Complaint sub judice should immediately stay the power of the Court to act further in the matter.

The record will reveal that JAMESTOWN VILLAGE CONDOMINIUM OWNERS ASSOCIATION, one of the Respondents, had filed four (4) actions against MARKET/ MEDIA RESEARCH, INC., the Relator; all stemming from the Relator's ownership of a condominium. These actions are designated, JAMESTOWN I, JAMESTOWN II, JAMESTOWN III, and JAMESTOWN IV. See the Complaint pages 1 through 3,

paragraphs 2 through 6.

The discovery admitted by JAMESTOWN in JAMESTOWN III and the discovery requested in this Writ show that the actions were vexatious and malicious.

CONCLUSION

An Order should issue from this Court addressed to the Court of Common Pleas, en banc, and in particular to the Honorable Terrence O'Donnell in respect to the October 11, 1990 hearing on default and any other action, pending the determination of this Writ.

Respectfully submitted,
SNYDER, NEFF AND CHAMBERLIN
1648 Hanna Building
1422 Euclid Avenue
Cleveland, Ohio 44115-2001
(216) 696-2630

BY /s/ Owen Calvin Neff
OWEN CALVIN NEFF 0034210
Attorney for Relator
MARKET/MEDIA RESEARCH, INC.

EXHIBIT "A"

Snyder, Neff and Chamberlin
(Letterhead omitted in printing)

September 28, 1990

The Honorable Terrence O'Donnell
Judge of the Court of Common Pleas
Courts Tower - Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

Re: Jamestown Condominium Owners Association vs. Market/Media Research, Inc.
Case No. 180 862

Dear Judge O'Donnell:

We understand that a case management conference was held on the above case yesterday. We had no card notice of it. This case is one of three now subject to a writ of prohibition pending in the Supreme Court. Your law clerk, who conducted the hearing was apparently not informed of this. A copy of the writ of prohibition matter is enclosed.

We would appreciate no action being taken while the writ is pending.

Respectfully,

OWEN C. NEFF

OCN/dm

Enclosure

cc: John J. Duffy, Esq.

IN THE SUPREME COURT OF OHIO

CASE NO. 90-1588

MARKET/MEDIA RESEARCH, INC.

Relator

vs

CUYAHOGA COUNTY COURT OF COMMON PLEAS et al.

Respondents

MOTION FOR PROTECTIVE ORDER

Now comes the Respondent, CUYAHOGA COUNTY COURT OF COMMON PLEAS, by and through counsel, and requests this Honorable Court to grant its motion for a protective order pursuant to Rule 26(C)(1) of the Ohio Rules of Civil Procedure, so that discovery not be had pending ruling on Respondent's Motion to Dismiss filed on September 18, 1990. The reasons for this motion are set forth in the accompanying brief which is incorporated herein by reference.

STEPHANIE TUBBS JONES,
Prosecuting Attorney for Cuyahoga County, Ohio

By /s/ Colleen C. Cooney
COLLEEN C. COONEY (0013945)
CAROL SHOCKLEY (0039386)
Assistant Prosecuting Attorneys

Attorneys for Within Respondent

BRIEF

STATEMENT OF THE CASE

Relator seeks a writ of prohibition to prevent the Court of Common Pleas from proceeding in two (2) pending actions. A Motion to Dismiss was timely filed by the within Respondent on September 18, 1990. On August 16, 1991, Respondent received a Request for Admissions which contained forty-nine (49) requests for admissions. No prior discovery request was ever directed to the Respondent Court.

ARGUMENT

The within Respondent submits that during the pendency of its Motion to Dismiss it would be inappropriate and unreasonably burdensome to require the Respondent to respond to this burdensome and highly questionable discovery request when this action may well be resolved on the pending Motion.

In construing Federal Rule 26(C), it has been held that when a motion is pending which can determine the validity of a complaint, no reason exists to undertake the expense and inconvenience of further discovery until the disposition of such motion. See Klein v. Lionel Corp., 18 F.R.D. 184 (D. Del., 1955), wherein the court stated, as follows:

> In the present case if the plaintiff desires information from the defendant which is not useful to him on his motion for summary judgment but will be of use to him upon the trial of the cause, then the acquisition of such information should await the disposition of the pending motion for summary judgment. There could be no reason to undergo the expense and inconvenience of long depositions for use at the trial until the disposition of the defendants' motions for summary judgment, which might determine the validity of the plaintiff's complaint.

In Wood v. McEwen, 664 F.2d 797, 800 (sic) (9th Cir. 1981) (per curiam), cert. denied, 455 U.S. 942 (1982), the trial court judge "issued a protective order suspending discovery

until he decided [defendants' motion to dismiss]." The Court of Appeals held that "[t]he [trial] court did not abuse its discretion in issuing the protective order staying discovery." Id. at 802. See also, O'Brien v. Avco Corp., 309 F.Supp. 703, 705 (S.D. N.Y.), rev'd on other grounds, 425 F.2d 1030 (2d Cir. 1969). ("[W]hen, as here, the determination of preliminary questions may dispose of the entire suit, applications for discovery may properly be deferred until the determination of such questions."); Billiard v. Rockwell International Corp., 85 F.R.D. 622, 666 (sic) (S.D. N.Y. 1980).

Therefore, in accordance with the foregoing case authority, Respondent respectfully petitions this Honorable Court, pursuant to Civil Rule 26(C)(1), to issue a protective order that discovery not be had pending the resolution of Respondent's Motion to Dismiss.

Respectfully submitted
STEPHANIE TUBBS JONES,
Prosecuting Attorney for Cuyahoga County, Ohio

By /s/ Colleen C. Cooney
COLLEEN C. COONEY
CAROL SHOCKLEY
Assistant Prosecuting Attorneys
Courts Tower, Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7780 - (216) 443-7843
Attorneys for Within Respondent

CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Protective Order was sent by regular United States Mail, postage prepaid, this 21st day of August, 1991 to Owen C. Neff, attorney for Relator, 720 Statler Office Tower, East 12th & Euclid Avenue, Cleveland, Ohio 44115; and to John J. Duffy, attorney for Jamestown Village, 23823 Lorain Road, North Olmsted, Ohio 44070.

/s/ Colleen C. Cooney
COLLEEN C. COONEY

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

CASE NO. 90-1588

MARKET/MEDIA RESEARCH, INC.

Relator

-vs-

CUYAHOGA COUNTY COURT OF COMMON PLEAS, et al.

Respondents.

SUGGESTION OF MOOTNESS

Respondent Jamestown Village Condominium Association ("Jamestown") suggests that Relator's complaint for a writ of prohibition has become moot, on the grounds that of the two cases that had been pending before the Cuyahoga County Court of Common Pleas, one has been settled and dismissed by agreement of the parties, as more fully appears from the journal entry of that court at Volume 1302, Page 135, a copy of which is attached hereto as Exhibit A.

Relator's "Complaint" for a writ of prohibition is based on the assertion that Jamestown has filed a multiplicity of sham and frivolous actions against Market/Media Research. There is now only one action by Jamestown pending against Market/Media - i.e. case No. 154270, a foreclosure for non-payment of maintenance fees. On what grounds could this Court be asked to prohibit Judge Timothy McMonagle from proceeding with that case? Any alleged duplication of issues in pending cases has been eliminated by the settlement in Case No. 180862. Forcible entry (the first cause of action) was never issue in Case

No. 154270, has now been disposed of and Jamestown's claim for rentals is specifically agreed to be pending in that case. Although Market/Media argues that the foreclosure action (Case 154270) is barred because not raised in Case No. 149815, (a declaratory judgment action based on the Association's first right of refusal), Market/Media has raised that defense in the only case now pending. There is no reason that Judge McMonagle cannot evaluate that defense in the trial court.

The agreed settlement was made "without prejudice" to defendant Market/Media Research, Inc. in Cases Numbered 149815, 152740 and the writ pending in Ohio Supreme Court, Case No. 90-1488 (sic). Nevertheless, it does not "prejudice" Market/Media to inform this Court that one of the cases, Relator has asked this Court to prohibit has been disposed of. In essence, there is nothing to prohibit; there is no longer a "multiplicity" of cases and Relator's complaint for a writ of restitution (sic) is therefore moot.

Respectfully submitted,
/s/ John J. Duffy
John J. Duffy
John J. Duffy & Associates
Attorney for Respondent,

Jamestown Village Condominium Association
23823 Lorain Road - #210
North Olmsted, Ohio 44070
(216) 779-6636
No. 0032839

("Service" omitted in printing)

EXHIBIT A

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

NO. 180862

JAMESTOWN VILLAGE CONDOMINIUM ASSOCIATION
Plaintiff(s)

-vs-

MARKET/MEDIA RESEARCH, INC.
Defendant(s)

STIPULATION FOR DISMISSAL
AND JUDGMENT ENTRY

THE STATE OF OHIO)
) SS.
County of Cuyahoga)

We, the attorneys for the respective parties, do hereby stipulate Defendant to vacate garage spaces 24 & 25 by Midnight, November 1, 1990. Writ to issue on November 2, 1990 if Defendant has not so vacated.

The second cause of action is dismissed without prejudice on the understanding that a claim for the alleged amount due is pending in Case No. 154270, all without prejudice to Defendant Market/Media Research, Inc. in Cases Numbers 149815, 154270 and the Writ pending in Ohio Supreme Court

Case No. 90-1588 entitled Market/Media Research, Inc. v. Common Pleas Court of Cuyahoga County, and that the Court may enter an order accordingly, notice by the Clerk being hereby waived. Court will treat any viol of this order as contempt. TOD

IT IS SO ORDERED

/s/ Terrence O'Donnell
Judge

/s/ John J. Duffy
Attorney for Plaintiff

/s/ Owen C. Neff
Attorney for Defendant

MARKET/MEDIA RESEARCH, INC.

By /s/ Robert E. L. Rhodes
President

RECEIVED FOR FILING
OCT 12 1990
GERALD R. FUERST, CLERK

(Civil Rule No. 41)

IN THE SUPREME COURT OF OHIO

CASE NO. 90-1588

MARKET/MEDIA RESEARCH, INC.

Relator,

-vs-

CUYAHOGA COUNTY COURT OF COMMON PLEAS, et al.,

Respondents.

Market/Media Research, Inc.

RESPONSE TO SUGGESTION OF MOOTNESS

The thesis of the Suggestion of Mootness is that the Order issued by the Honorable Terrence O'Donnell in JAMESTOWN IV, case number 180862, leaves JAMESTOWN III, case number 154270, the only matter now pending in the trial court.

The Order in question (Exhibit 1), most of which is in the handwriting of Counsel for JAMESTOWN, provides the following:

> "We, the Attorneys for the respective parties, do hereby stipulate DEFEDANT (sic) to vacate garage spaces 24 & 25 by midnight November 1, 1990. Writ to issue on November 2, 1990 if Defendant has not so vacated.
>
> The second cause of action is dismissed without prejudice on the understanding that a claim for the alleged amount due is pending in case number 154270. All without prejudice to

> Defendant MARKET/MEDIA RESEARCH, INC. in cases numbered 149815, 154270 and the writ pending in Ohio Supreme Court Case No. 90-1588 entitled "MARKET/MEDIA RESEARCH, INC. v. COMMON PLEAS COURT OF CUYAHOGA COUNTY and that the Court may enter an Order accordingly, notice by the Clerk being hereby waived."

After the stipulation was signed and the Defendant and Counsel had left the Court, the following was apparently added, by Judge O'Donnell:

> ". . . Court will treat any viol(sic) of this Order as contempt. TOD"

This Order is void on its face and self-defeating for the following reasons:

1) The second paragraph of the Order states: that the "Second Cause of Action" is dismissed "on the understanding that a claim for the alleged amount due is pending in case number 154270", a prior action. This is an admission that JAMESTOWN IV, case number 180862, the action before Judge O'Donnell, was duplicative of JAMESTOWN III, case number 154270. It is well settled that:

> ".... Under the law a party is not permitted to have and enjoy the luxury of more than one lawsuit concerning the same subject, between the same parties, in the same court, and at the same time. All in excess of more than one suit would be regarded as vexatious and improper and upon the attention of the Court being directed to the fact by answer or demurrer, would subject the offending party to discipline requiring him to dismiss the vexatious suits and be made to pay the costs made in bringing them, and, perhaps, subject him to an action on behalf of the injured party for damages. LAUER v. SMITH (1903) 1 OCC NS 121-123, 124. Aff'd without opinion, 65 Ohio St. 563.

As this Court held in STATE, ex rel. LARGENT v. FISHER (1989) 43 O.S. 3rd 160 at page 163, a writ of prohibition will lie where one judge attempts to usurp the jurisdiction of another "regardless of any available right of Appeal" Id.

Furthermore, the same reasoning leads to the inevitable conclusion that the Court in JAMESTOWN III is about to act in usurpation of the jurisdiction exclusively vested in the Honorable Michael J. Corrigan by virtue of the prior action, JAMESTOWN II, case number 149815.

2) The "First Cause of Action" for restitution of garage spaces is shown on the face of the Complaint to have been barred by the applicable Statute of Limitations, R.C. 1923.01(B).

The Complaint, first filed by JAMESTOWN in the Rocky River Municipal Court (Exhibit 2), states as follows:

> "Plaintiff for its first cause of action says that the said defendant has, ever since the 1st day of March, 1987 unlawfully and forcibly detained, and does still unlawfully and forcibly detain from Plaintiff, possession of the following described premises...Garage Spaces Nos. 24 and 25...."

The file stamp of the Clerk shows that this action was brought on August 21, 1989 some six (6) months beyond the date authorized by law. R.C. 1923.01(B), provides:

> "An action shall be brought under this chapter within two years after the cause of action accrues."

The Defendant brought this statute to the attention of the Rocky River Municipal Court, where JAMESTOWN IV was first filed. The Court in its entry (Exhibit 3 at page 2) specifically warned Counsel for JAMESTOWN against "presentation of its First Cause of Action for Forcible Entry and Detainer to Common Pleas Court.... in light of Defendant's possible assertion of O.R.C. 1923.01(B) therein."

3) JAMESTOWN claims that it was authorized to bring multiple lawsuits for the reason that each separate alleged violation of contractual duty or breach arising under the Condominium Declaration Agreement is a separate cause of action for

which a separate suit may be maintained. The record shows that each of the alleged breaches occurred prior to the filing of JAMESTOWN I, case number 143483. Such a contention is clearly contrary to the decision of this Court in MARKOTA v. EAST OHIO GAS COMPANY (1951) 154 O.S. 546

> 2. Plaintiff's statement of more than one cause of action in his petition is proper only if plaintiff would have been entitled, at the commencement of such action, to maintain more than one action to enforce the rights and claims asserted in the petition.
>
> 3. Although a right of action may arise at each time that damage covered by a single indemnity agreement occurs, a plaintiff may maintain only one action to enforce any such rights existing at the time such action is commenced. (VASU v. KOHLERS, INC. 145 Ohio St. 321, distinguished.)

The Court explained at page 549:

> This raises the question as to whether, notwithstanding the fact that the second amended petition purported to state seven separate causes of action, more than one action might have been instituted by plaintiffs, at the time of the commencement of the instant action, to enforce the rights asserted in their second amended petition.
>
> Defendant contends that the agreement of the defendant, hereinbefore referred to, created continuing obligations; and that, for every breach of such obligations, a new right of action arose. However, it does not follow that, *after* several of such rights of action have *arisen*, more than one action may be instituted to enforce them.

Thus, it is generally recognized that, *after* several of such rights of action have arisen, the injured party must include them all in any action brought or be barred from asserting, in a separate action, any right of action not so included. KENNEDY v. CITY OF NEW YORK, 196 N.Y. 19, 89 N.E. 360, 24 L.R.A. (N.S.) 847; JONES v. MORRIS PLAN BANK OF PORTSMOUTH, 168 Va. 284, 191 S.E. 608. See COCKLEY v. BRUCKER, 54 Ohio St., 214, 44 N.E. 590; FOX v. ALTHORP, 40 Ohio St. 322; STRANGWARD v. AMERICAN BRASS BEDSTEAD CO., 82 Ohio St. 121, 91 N.E. 988; 1 American Jurisprudence 489, 491, Sections 107, 109. The reason for this rule is that the bringing of separate actions for each breach would be unnecessarily vexatious to the defendant and would give the plaintiffs no advantage. 5 Williston on Contracts (Rev. Ed.), Section 1292. Thus causes of action, divisible and separate as they arise, may, after they have arisen, coalesce and, at least for some purposes, become inseparable and single. GREEN v. PETERSEN, 218 N.Y. 280, 112 N.E. 746; GUARDIAN LIFE INS. CO. v. JOHNSON, 186 Ark. 1019, 57 S.W. (2d) 555; STATE v. DAVIS, 35 Mo. 406.

> This rule would seem to be particularly applicable with respect to an agreement to indemnify against damages such as that involved in the instant case. While technically a right of action arises at each time that damage covered by an indemnity agreement occurs, there is no valid reason which would justify a plaintiff in failing, in one action, to assert his claim for all the items of such damage for which he should seek indemnity and which have occurred prior to the commencement of such action.
>
> In the instant case, a contrary rule might well have justified plaintiffs in further splitting the single cause of action, asserted in their second amended petition, by setting forth a separate cause of action with respect to each of the 12 hogs for whose loss recovery was sought in the third cause

> of action, and a separate cause of action for loss of each of the many trees involved in the claim with respect to timber found in the seventh cause of action. Followed to its logical conclusion, such contrary rule might even justify the assertion of a separate cause of action with regard to each bite taken by each one of Plaintiff's cows and each one of their hogs (alleged to have gotten loose by reason of defendant's activities) in consuming the corn and oats, for destruction of which recovery was sought in the first cause of action. CF. STEIN v. STEAMBOAT PRAIRE ROSE, 17 Ohio St. 471, 478.

4. By filing the suggestion of mootness, the RESPONDENT is guilty of violating the Order of Judge O'Donnell which Judge O'Donnell stated in the Order would be treated as contempt. In that Order, the RESPONDENT chose the following language:

> "All without prejudice . . . . (in) the writ pending in Ohio Supreme Court Case No. 90-1588 entitled MARKET/MEDIA RESEARCH, INC. v. COMMON PLEAS COURT OF CUYAHOGA COUNTY . . .

In addition to this contumacious conduct, the RESPONDENT is guilty of willful and flagrant violation of the Discovery Orders in JAMESTOWN II and III by failing to produce the documentary evidence which is now the subject to RELATOR'S motion to compel currently pending before this Court. See In Re MORRELL, 174 O.S. 427, at page 428:

> "A party in contempt of court is not entitled to prosecute or defend an action when the nature of his contempt is such as to hinder and embarrass the due course of procedure in the cause."

5. RESPONDENT asks "on what grounds could this court be asked to prohibit Judge Timothy McMonagle from proceeding with that case?"

The answer is that Judge McMonagle is utterly without jurisdiction to proceed, his apparent jurisdiction resting upon the fraudulent case designation form filed by Counsel for JAMESTOWN which denied the relationship with any prior case. The gravamen of Relator's Complaint in prohibition is precisely that Judge McMonagle is about to usurp the jurisdiction exclusively vested in Judge Corrigan to decide these issues.

Clearly, maintaining JAMESTOWN III as a separate action before Judge McMonagle is a violation of Superintendence Rule 4, which provides in pertinent part that the judge to whom a Civil Case is assigned by lot "becomes primarily responsible for the determination of every issue and proceeding in the case until its termination."

JAMESTOWN may not defeat the purpose of Superintendence Rule 4, and go "Judge shopping" by splitting its action into a multiplicity of suits and filing false designation forms.

CONCLUSION

This Court should disregard the RESPONDENT JAMESTOWN'S Suggestion of Mootness. The Court should vacate the Order of Judge O'Donnell in JAMESTOWN IV as void and an impermissible interference with this Court's jurisdiction in the pending action in Prohibition. See STATE ex rel. PFEIFFER vs. COURT OF COMMON PLEAS OF LORAIN COUNTY 13 O.S. 2nd 133. In the alternative the Court should grant MARKET/MEDIA RESEARCH, INC. leave to file a notice of Appeal from Judge O'Donnell's dismissal as a void order.

Respectfully submitted,

OWEN C. NEFF 0034210